

No. 11388

United States
Circuit Court of Appeals
For the Ninth Circuit.

WELLS, INC., a Corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

and

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

WELLS, INC., a Corporation,

Respondent.

Transcript of Record

Upon Petition for Review, and Petition to Enforce an Order
of the National Labor Relations Board.

FILED

1947-8

PAUL P. O'BRIEN,
CLERK

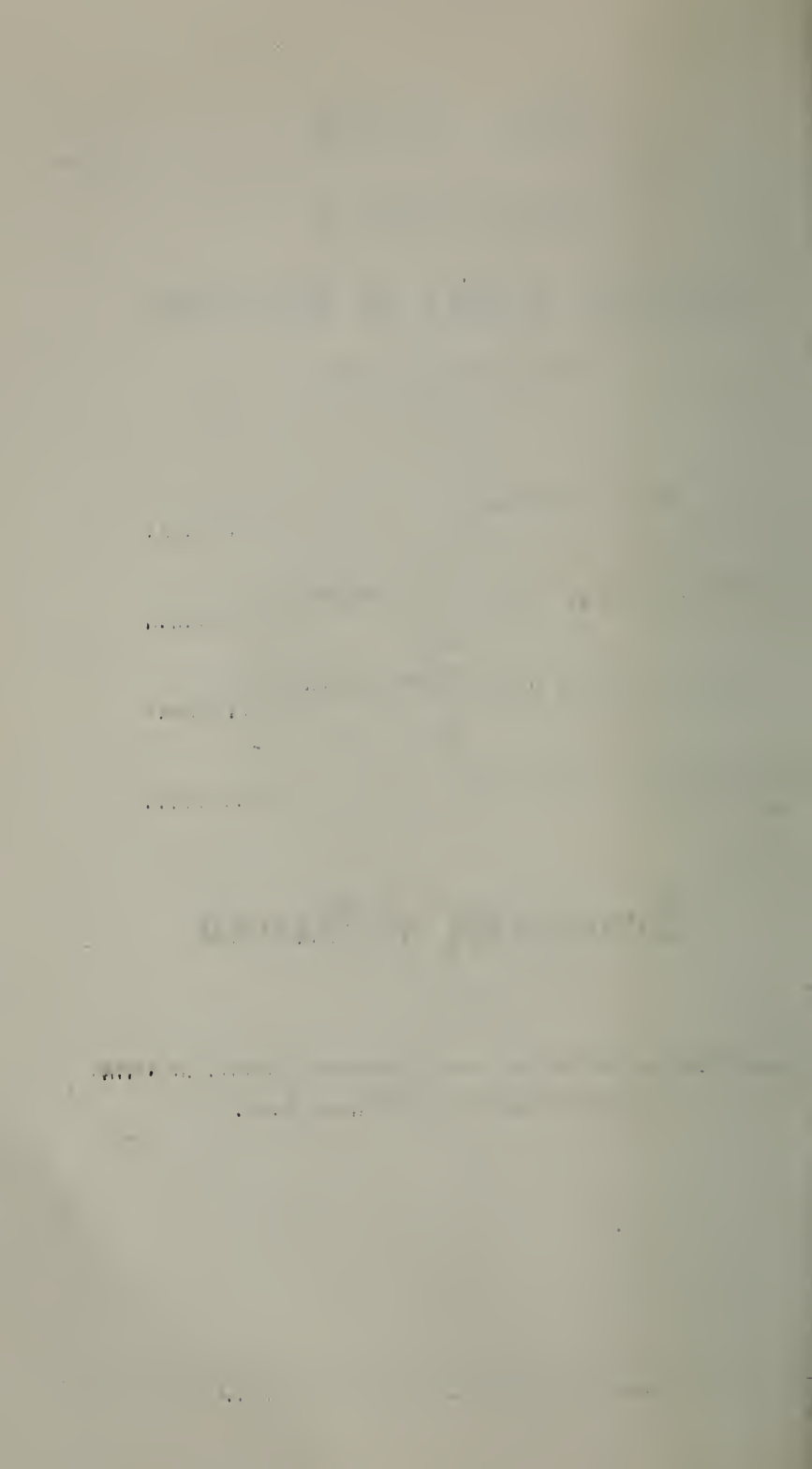
No. 11388

United States
Circuit Court of Appeals
For the Ninth Circuit.

| | |
|---------------------------------|-------------|
| WELLS, INC., a Corporation, | Petitioner, |
| vs. | |
| NATIONAL LABOR RELATIONS BOARD, | Respondent. |
| and | |
| NATIONAL LABOR RELATIONS BOARD, | Petitioner, |
| vs. | |
| WELLS, INC., a Corporation, | Respondent. |

Transcript of Record

Upon Petition for Review, and Petition to Enforce an Order
of the National Labor Relations Board.



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

| | PAGE |
|---|------|
| Answer | 10 |
| Answer of the N.L.R.B. to Petition for Review of Its Order and Request for Enforcement of said Order | 334 |
| Answer and Reply to Petition for Review of Respondent's Order and Request for Enforce- ment of said Order | 342 |
| Appearances | 72 |
| Board Exhibit of Record | 297 |
| Board's Counter Designation of Record | 345 |
| Certificate of the National Labor Relations Board | 12 |
| Complaint | 3 |
| Decision and Order | 21 |
| First Amended Charge | 1 |
| Intermediate Report | 42 |
| Notice of Hearing | 8 |
| Objections to the Intermediate Report Recom- mendations, Findings of Fact and Conclu- sions of Trial Examiner | 18 |
| Oral Argument on Behalf of the N.L.R.B. | 282 |

| INDEX | PAGE |
|--|-------------------|
| Oral Argument on Behalf of the Respondent .. | 287 |
| Order Designating Trial Examiner | 14 |
| Order Transferring Case to the National Labor Relations Board | 16 |
| Petitioner's Amended Designation | 346 |
| Petition for Review | 323 |
| Proceedings | 73 |
| Points Relied Upon in Support of Petition for Review | 332 |
| Witnesses for N.L.R.B.: | |
| Anderson, Glen O. | |
| —Direct | 127 |
| —Cross | 133 |
| —Redirect | 135 |
| —Recross | 139 |
| Apperson, K. C. | |
| —Direct | 80 |
| Benton, Jack C. | |
| —Direct | 81, 189, 202, 270 |
| —Cross | 102, 213, 271 |
| McBride, C. H. | |
| —Direct | 196 |
| —Cross | 199 |
| —Redirect | 200, 201 |
| —Recross | 201, 202 |

INDEX

PAGE

Witnesses for N.L.R.B.—(Continued)

McKay, George E.

—Direct 105

—Cross 124

McShane, T. E.

—Direct 143

—Cross 170

Witnesses for Respondent:

Divine, H. B.

—Direct 219, 230

—Cross 222

—Redirect 225

—Recross 226

Wells, J. W.

—Direct 232, 279

—Cross 250

—Redirect 259, 265

—Recross 262

Before the
National Labor Relations Board

Case No. 20-C-1306

In the Matter of:

WELLS, INC.,

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Wells, Inc. at P. O. Box 29, Reno, Nevada, employing 14 workers in long distance trucking has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) and (5) of said Act, in that on or about January 31, 1945, it, by its officers, agents, and employees terminated the employment of Jack Benton solely because of his membership in and activities

on behalf of International Association of Machinists, a labor organization, and at all times since such date has refused and does now refuse to employ the said Jack Benton in violation of Section 8, subdivision (3) of the Act.

On or about May 16, 1944, at all times since that date, and particularly on October 5 and December 22, 1944, it, by its officers, agents and employees has refused and now refuses to bargain collectively with the authorized agents of International Association of Machinists, a labor organization chosen by a majority of its employees at its Reno, Nevada, shop for collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment in violation of Section 8, subdivision (5) of said Act.

By all the acts set forth in the paragraphs above, and by disparaging the Union, ordering employees to refrain from Union discussions in the shop, discriminatorily refusing a Union representative admission to its premises, threatening to move its operations from Reno to Salt Lake City, interrogating its employees with respect to Union membership, and ridiculing an employee for wearing a Union button, it, by its officers, agents and employees interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8, subdivision (1) of the Act.

The undersigned further charges that said unfair

labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION OF MACHINISTS,

By /s/ K. C. APPERSON,

Grand Lodge Representative,
Whitcomb Hotel, San Francisco.

Subscribed and sworn to before me this 9th day of August, 1945, at San Francisco, California.

/s/ WALLACE E. ROYSTER,
Attorney.

(Admitted Aug. 24, 1945.)

[Endorsed]: Filed Aug. 9, 1945.

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Association of Machinists, that Wells, Inc., herein called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act,

49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section I, hereby issues its complaint and alleges as follows:

I.

Wells, Inc., is and at all times herein mentioned has been, a Nevada corporation with its principal office and place of business in Reno, Nevada.

II.

Respondent is a common carrier of freight by motor truck in the States of Nevada and California under Interstate Commerce Commission Docket No. MC 43269. Respondent, in the course and conduct of its business, transports and continuously has transported substantial amounts of freight from points in Nevada to points in California and from points in California to points in Nevada. The respondent also delivers freight to interstate carriers at points in California and Nevada destined for points outside California and Nevada and receives freight from interstate carriers at points in California and Nevada which originated at points outside California and Nevada.

III.

International Association of Machinists, herein called the Union, is affiliated with the American Federation of Labor and is a labor organization

within the meaning of Section 2, subdivision 5, of the Act.

IV.

All mechanics, mechanic helpers, and greasers employed by the respondent at its shop in Reno, Nevada, constitute a unit appropriate for the purposes of collective bargaining.

V.

On May 16, 1944, the Union was, and at all times since that date has been the duly designated representative of a majority of the employees in the appropriate unit for the purposes of collective bargaining.

VI.

On May 16, 1944, at all times since that date, and particularly on October 5, 1944, and December 22, 1944, the respondent refused and now refuses to bargain collectively on request with the duly authorized representative of the Union.

VII.

Respondent, through its officers, agents, and employees, during about the months of December 1944 and January 1945, interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by the following acts:

(a) disparaging the Union.

(b) ordering employees to refrain from Union discussions in the shop.

(c) discriminatorily refusing a Union representative admission to its premises.

(d) threatening to move its operations from Reno to Salt Lake City.

(e) interrogating its employees with respect to Union membership, and

(f) ridiculing an employee for wearing a Union button.

VIII.

Respondent, through its officers, agents, and employees, on January 31, 1945, discharged Jack Benton solely because of his membership in and activities on behalf of the Union and at all times since that date has refused and now refuses to reemploy the said Jack Benton.

IX.

By all the acts set forth and described in paragraphs VI, VII, and VIII, above, the respondent has interfered with, restraining, and coercing its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby has engaged in, and thereby is engaging in, unfair labor practices within the meaning of Section 8, subdivision 1, of the Act.

X.

By its refusal to bargain as set forth and described in paragraph VI, above, the respondent has engaged in and is now engaging in unfair labor practices within the meaning of Section 8, subdivision 5, of the Act.

XI.

By the discriminatory discharge of Jack Benton as set forth and described in paragraph VIII, above, the respondent has engaged in and is now engaging in unfair labor practices within the meaning of Section 8, subdivision 3, of the Act.

XII.

The activities of the respondent as set forth and described in paragraphs VI, VII, VIII, IX, X, and XI, occurring in connection with the operations of the respondent described in paragraphs I and II, above, have a close, intimate, and substantial relationship to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIII.

The acts of the respondent described above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions 1, 3, and 5, Section 2, subdivisions 6 and 7 of the Act.

Wherefore, the National Labor Relations Board on the 9th day of August, 1945, issues its Complaint against Wells, Inc., a corporation, respondent herein.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National Labor Relations Board,
Twentieth Region.

[Endorsed]: Admitted Aug. 24, 1945.

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 24th day of August, 1945, at United States Attorney's Office, Third Floor of the Post Office Building, Reno, Nevada, at 10:00 o'clock in the forenoon, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for

the Twentieth Region on this 9th day of August, 1945.

[Seal] /s/ JOSEPH E. WATSON,

Regional Director, National
Labor Relations Board.

(In Ev)

[Endorsed]: Admitted Aug. 24, 1945.

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE OF NOTICE OF
HEARING AND COMPLAINT

Date of Mailing August 9, 1945.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document (s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Wells, Inc., P. O. Box 29, Reno, Nevada, Registry No. 915559. Date of delivery. August 11, 1945.

International Association of Machinists, c/o K. C. Apperson, Whitcomb Hotel, San Francisco, California. Registry No. 915560. Date of delivery: August 10, 1945.

/s/ PATRICIA MAGUIRE

Subscribed and sworn to before me this 17th day of August, 1945.

[Seal] /s/ ROSE C. CHAFFEE,

Designated Agent, National
Labor Relations Board.

(Signed Post Office receipts No. 915559 and 915560 attached.)

[Endorsed]: Admitted Aug. 24, 1945.

[Title of Board and Cause.]

ANSWER

Comes now the above-named respondent, Wells, Inc., and in answer to the complaint on file herein admits, denies and alleges as follows:

1. Admits the allegations contained in paragraphs one and two.

2. In answer to paragraph four, this respondent generally and specifically denies the allegations contained in said paragraph four,* which provide that all mechanics, mechanic helpers and greasers employed by the respondent at its shop in Reno, Nevada, constitute a unit appropriate for the purpose of collective bargaining.

3. This respondent denies generally and specifically each and every allegation contained in said paragraphs five, six, seven, eight, nine, ten, eleven, twelve and thirteen.

4. This respondent denies generally and specifically each and every allegation contained in said complaint not otherwise specifically admitted herein.

Wherefore, respondent prays that the complaint in this matter be dismissed.

/s/ LOUIS H. CALLISTER,

Attorney for Respondent.

State of Utah,

County of Salt Lake—ss.

Howard A. Wells, being first duly sworn on oath, deposes and says: That he is the Vice-President of Wells, Inc., the respondent herein, and as such makes this verification; that he has read the foregoing Answer, knows the contents thereof, and the same is true according to his own knowledge except as to matters therein alleged on information and belief, and as to such matters he believes them to be true.

/s/ HOWARD A. WELLS

Subscribed and sworn to before me this 17th day of August, 1945.

[Seal] /s/ MARGARET A. LEHMAN,

Notary Public, residing in
Reno, Nevada.

My Commission Expires July 31, 1948.

(Received Aug. 20, 1945, N.L.B.)

[Endorsed]: Admitted Aug. 24, 1945.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11388

WELLS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Wells, Inc. and International Association of Machinists," the same being Case No. 20-C-1306 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated August 24, 1945.

(2) Stenographic transcript of testimony held before Trial Examiner Myers on August 24 and 25, 1945, together with all exhibits introduced in evidence.

(3) Copy of petitioner's letter dated September 11, 1945, requesting extension of time to file brief before the Trial Examiner.

(4) Copy of telegram, dated September 21, 1945, granting all parties extension of time to file brief before the Trial Examiner.

(5) Copy of Trial Examiner Myer's Intermediate Report, dated October 17, 1945 (annexed to item 10 hereof).

(6) Copy of order transferring Case to the Board, dated October 23, 1945.

(7) Copy of petitioner's telegram, dated November 6, 1945, requesting extension of time to file exceptions and brief.

(8) Copy of telegram, dated November 8, 1945, granting all parties extension of time to file exceptions and brief.

(9) Copy of petitioner's exceptions to the Intermediate Report.

(10) Copy of decision and order issued by the National Labor Relations Board on June 12, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order

Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 6th day of September, 1946.

[Seal]

JOHN E. LAWYER,
Chief, Order section
National Labor Relations
Board.

[Title of Board and Cause.]

ORDER DESIGNATING TRIAL
EXAMINER

It Is Hereby Ordered that Howard Myers act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 3, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., August 24, 1945.

/s/ FRANK BLOOM,
Chief Trial Examiner.

September 11, 1945

Mr. Wallace E. Royster, Attorney
National Labor Relations Board
1095 Market Street
San Francisco (3), California

Re: Wells, Inc.
Case No. 20-C-1306

Dear Sir:

Mr. Louis H. Callister is presently in Washington, D. C. appearing before the National War Labor Board. He expects to return to Salt Lake City on either the 17th or 18th of September, 1945.

He has asked that I write to you and request an extension in which to file his brief in the above-entitled matter. If it is agreeable with your Board, he would like to have an extension to and including the 27th day of September in which to file the brief.

We would appreciate advice from you as to whether or not this extension can be granted and would also appreciate you notifying the Examiner who heard the case, of your decision.

Thanking you in advance for your consideration, I remain

Very truly yours,

/s/ E. R. CALLISTER,
Associate.

September 21, 1945

E. R. Callister,
Continental Bank Bldg.
Salt Lake City, Utah

Wallace E. Royster, Attorney
Nalt. Labor Relation Board
1095 Market Street
San Francisco, California

Briefs may be filed re Wells, Inc., Case 20-C-1306
if mailed by September Twenty-seven.

SAMUEL H. JAFFEE,
Associate Chief Trial Exam-
iner,
National Labor Relations
Board.

[Title of Board and Cause.]

NLB-1403

9/26/45

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D.C.,

It Is Hereby Ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules

and Regulations—Series 3, as amended, that Case No. 20-C-1306 be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., October 23, 1945.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

WU D62 35/34 11 Extra

Salt Lake City, Utah, Nov. 6, 1945 1212P

National Labor Relations Board
Rochambeau Bldg.

Would like additional ten days to file briefs, etc., in Wells, Inc. Case, No. 20-C-1306. Mr. Callister in San Francisco for past week.

Lois Krause, Secretary, 619 Continental Bank Building, Salt Lake City, Utah, Telephone 3-3819.

327P

INC 20-C-1306 619 3-3819 . . .

National Labor Relations Board

Louis H. Callister

619 Continental Bank Bldg.

Salt Lake City, Utah

K. C. Apperson

306 Pacific Bldg.

Oakland, California

National Labor Relations Board

San Francisco, California

November 8, 1945

Re: Wells, Inc., 20-C-1306

Time for filing exceptions and briefs extended
to November 19.

NATIONAL LABOR RELATIONS BOARD

[Title of Board and Cause.]

OBJECTIONS TO THE INTERMEDIATE REPORT RECOMMENDATIONS, FINDINGS OF FACT AND CONCLUSIONS OF TRIAL EXAMINER

Comes now the above named respondent, Wells, Inc., and objects to the recommendations upon the grounds that they are not supported by the evidence in this cause; objects to the conclusions of law found by the Trial Examiner upon the grounds that the same are not based upon the evidence, and

further, that said conclusions of law have no basis in fact or in law.

This respondent further objects to the findings of the Trial Examiner upon the grounds that the same are not supported by the evidence in this cause.

The respondent further objects to the conclusions of the Trial Examiner as follows:

1. That it is in violation of the National Labor Relations Act for an employer to discharge a foreman (which was stipulated that he had the right to hire and fire and direct all the activities of the sixteen employees) who participates in organization of a union, thereby subjecting the employer to unfair labor practices. This respondent does not admit that this was the grounds for the discharge, but was for the reason that the foreman desired to be removed from his duties as foreman and become a mechanic. The company was not willing to agree to this; however, accepting the findings of the Trial Examiner, this respondent objects to his conclusions of law on the grounds that an employer has the right to discharge a foreman who, as stipulated, has the right to hire and fire, direct and control the activities of the entire personnel of the unit appropriate for the purpose of collective bargaining, who participates in union activities by soliciting union membership among the employees whom he supervises. The Trial Examiner in effect is finding that the National Labor Relations Act prohibits an employer from discharging a foreman who

coerces or solicits union membership, thereby subjecting the company to violation of the National Labor Relations Act. He, therefore, holds that the company has no control over the activities of the foreman, and cannot take disciplinary action or discharge the foreman for subjecting it to a violation of the National Labor Relations Act. It is significant that the Trial Examiner does not cite any authorities to substantiate his position.

2. The company further objects to the findings and conclusions of the Trial Examiner in alleging that the respondent herein has refused to bargain with the majority representative of its employees in an appropriate bargaining unit. No unit was ever agreed to prior to the hearing of this cause in Reno. Query: Can an employer be guilty of refusing to bargain as to the terms and conditions of employment when they are unable to agree as to the appropriate unit?

The company objects to the examiner's finding that the union had stated to Wells, Inc. that the only unit they sought consisted of all persons doing mechanical work in the body shops as mechanics, thereby finding that a unit had been agreed to. The complaint in this cause definitely, unequivocally and with certainty alleges the appropriate unit to be employees other than that which the examiner finds had been agreed to by the union and the company as an appropriate unit for the purpose of collective bargaining. The unit alleged in paragraph four of the complaint by this board as appropriate

included, in addition to mechanics and mechanics helpers, greasers.

3. The company objects to the findings and conclusions of the Trial Examiner that the respondent interfered, restrained and coerced its employees in the exercise of their rights to self-organization, one of the bases for this finding by the Trial Examiner being that the company representative made a slighting remark to their foreman, whom it was stipulated had the right to hire and discharge, and who had control of the employees in the appropriate unit, against unionism. The company objects to the findings and conclusions of this examiner that the company, under the National Labor Relations Act, has no right to discipline or take such action as it deemed necessary to stop such employees from subjecting it to violation of the National Labor Relations Act. If the company makes a slighting remark about the union to one of its executives, and this is a violation of the National Labor Relations Act, then it precludes the right of the employer to discipline its executives and foreman.

Respectfully submitted,

WELLS, INC.

By LOUIS H. CALLISTER,

Attorney.

[Title of Board and Cause.]

DECISION AND ORDER.

On October 17, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled pro-

ceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and order hereinafter set forth.

1. We agree with the conclusion of the Trial Examiner that the respondent discriminated in regard to the hire and tenure of employment of Foreman Benton and thereby discouraged membership in the Union in violation of Section 8 (3) of the Act.

It is the respondent's contention that Foreman Benton was discharged, following his request either for a raise or for a demotion to the position of an ordinary mechanic, because demotion of a foreman to a non-supervisory status "has never been satisfactory"; such employees would "not take orders and subject themselves to disciplinary action by the

new foreman" as would other employees.¹ It is our opinion, and we find, that the respondent merely used this situation as a pretext for terminating Benton's employment in order to discourage union membership. At the outset, it must be observed that Superintendent Divine's original reaction to Benton's alternative request for demotion was not unfavorable. In fact, Divine and Benton even explored the possibility of Benton's going to work as a mechanic on the night shift where they had "a little bit of trouble." Benton made his request for a raise or, in the alternative, for demotion, sometime in the latter part of December 1944 or the first of January, 1945 at which time he was told by Superintendent Divine: "I think everything can be arranged and don't worry." Benton heard nothing more about the matter until January 31, when he was summarily discharged at the end of the working day, without any advance notice. It was then that Divine for the first time advanced the alleged impracticability of demotion as a reason for the denial of Benton's request.²

¹At the hearing, when Superintendent Divine was questioned about the reason for his refusal to demote Benton, he testified: "I have run shops since 1930 and I have tried demoting several foremen to mechanics and they won't concentrate on the work. They are constantly criticizing, and for that reason I didn't want to try Jack Benton as an ordinary mechanic."

²Superintendent Divine, in effect, testified that Foreman Benton came to him about January 25 and asked him if it was possible to get more money and

Benton's services both as a mechanic and as a foreman were entirely satisfactory. The discharge took place prior to V-J Day at a time when there was a manpower shortage prevailing throughout the country, and when, as Benton testified without contradiction, the respondent "didn't have the qualified men." Under these circumstances it is highly significant that the respondent not only failed to grant Benton's request for demotion, but did not give him an opportunity to remain as foreman at the same salary. Plainly, the language of Benton's request for a raise or demotion could not be construed as an ultimatum that he was unwilling to continue as a foreman at the same salary if neither request were granted.³ Nor does the final conversation between Benton and Superintendent Divine indicate that Divine had placed such a construction on Benton's requests. Divine told Benton that he was "relieved" of his foreman's duties and that he could not work as a mechanic. In response to

if not that he would like to be relieved of the foreman's job and given a job as a mechanic. Divine, however, testified that the January 25 conversation was the first and only conversation he had with Benton and that he informed Benton at that time that he "didn't want him as a mechanic." To the extent that Divine's testimony conflicts with that of Benton, it is not credited.

³Foreman Benton testified that he said to Superintendent Divine, "... I wondered if I could get some more money. If that wasn't satisfactory, I wondered if he could get another foreman and give me a job back as a mechanic."

Benton's query, "In other words you mean that I am fired?", Divine replied, "If you look at it that way, yes."

The respondent's hostility to the Union and its desire to frustrate organizational activities of the Union among its rank and file employees furnish a reasonable explanation for its discharge of Benton. Its hostility to the Union is reflected throughout the record. Through its officials, the respondent prevented the union representative from collecting union dues in the shop during non-working time; questioned employees concerning their union membership and activities, made disparaging remarks concerning the Union in the presence of rank and file employees; threatened to remove its operations to Salt Lake City rather than to submit to any of the demands of the Union in the proposed contract; and finally, engaged in dilatory tactics during the collective bargaining negotiations. The respondent's officials were fully aware of Benton's membership and interest in the Union. Indeed, W. E. Wells, the respondent's president, observed at one of the collective bargaining conferences that "Benton was responsible for his employees belonging to the Union" and "wishing to be represented by it." That a discharge of an active adherent of a union under circumstances which suggest no motivation other than hostility to the union, operates as a warning to all employees of the danger attached to adherence to the union, hence generally discourages union membership, cannot be denied. We conclude that the respondent discharged Benton because of its

manifest hostility to the Union and its desire to discourage membership therein by his discharge.

The fact that Benton was a supervisory employee does not relieve the respondent of its statutory obligation not to engage in discriminating conduct to discharge membership in the Union.⁴ We have held on prior occasions that the prohibition of Section 8(3) of the Act extends to any discriminatory discharge which is intended, or the purpose and effect of which is, to discourage membership in a labor organization,⁵ and the existence of a justifiable cause

⁴We are not confronted with the question of whether Benton's discharge would have been justified if the respondent had discharged him because his activities in behalf of a rank and file union were unlawful or to protect the respondent's neutrality. It did not assign such activities as a reason for his discharge at the time it occurred. Nor did the respondent claim in its pleadings or its evidence that it had discharged him for this reason. During the oral argument before the Trial Examiner, the respondent's counsel urged for the first time that to have permitted Benton to continue in its employ would have compromised its neutrality and subjected it to unfair labor practice charges. This was an obvious afterthought and not the reason for the discharge. We are not concerned with the question of whether a reason existed which could have been the basis of a non-discriminatory discharge. The issue here, as in all cases under Section 8(3), is whether the real reason for the discharge was to discourage membership in a labor organization.

⁵Matter of Air Associates, Inc., 20 N. L. R. B. 356, 375, enf'd as mod. 121 F. 2d, 586, (C.C.A. 2); Matter of Skinner and Kennedy Stationery Company, 13 N. L. R. B. 1186, enf'd 113 F. 2d, 667 (C.C.A. 8) where we found that the discharge of Foreman Eck-

for discharge is immaterial if it was not in fact the motivating cause for the discharge.

Upon the entire record we find that the respondent discriminated in regard to the hire and tenure of Benton's employment and thereby discouraged membership in the Union of its rank and file employees.

2. The Trial Examiner found that on December 22, 1945, when the respondent refused to bargain with the Union, the Union represented a majority of employees in the appropriate unit, and that the respondent's refusal to bargain violated Section 8(5) of the Act. Under the circumstances disclosed by the record, we cannot agree with the finding that the Union represented a majority and accordingly must dismiss the allegation of the complaint that respondent violated Section 8(5) of the Act.

The Trial Examiner's finding as to the Union's majority representation is based on authorization cards signed by five out of eight employees in the appropriate unit, and upon the employees' petition of December 18, 1944, which was signed by seven employees in the unit, designating the Union as the

ert reflected "an intention on the part of the employer to discourage its employees from aligning themselves with the Union." Cf. *Matter of Reliance Manufacturing Company*, 60, N. L. R. B. 946, where we found that a constructive discharge of a forelady because she refused to aid her employer in an anti-union campaign discouraged non-supervisory employees' membership in the Union; *Matter of Vail Manufacturing Company*, 61 N. L. R. B. 181; *Matter of Climax Engineer Co.*, 66 N. L. R. B., No. 141.

exclusive bargaining representative. While ordinarily we would recognize the designation by authorization cards as valid, we note that in the instant case the record shows that at the time these authorization cards were procured by the Union, Foreman Benton, who was in charge of the respondent's shop at Reno with the authority to hire and discharge, was actively engaged in union activities as a steward and trustee and influenced some of his subordinates to become members of the Union.⁶ Although the authorization cards were secured by Union Representative McKay rather than by Benton, and Benton's actual solicitation was apparently limited to a few employees, the unit is very small and it is impossible to determine the extent to which Foreman Benton's activities and solicitation were responsible for any employee's decision to join the Union, and

⁶Benton testified:

Q. You told these employees the Union was a good thing, they should join?

A. (Benton) I never told them they should join. We had a Union. If they wanted to join it, it was up to them, they were not forced.

Q. What did you tell them?

A. We had a Union. Most of them came in for the cure, if you know what I mean. They didn't join the Union, they didn't stay long enough. I didn't ask 90 percent to join. They didn't have the money to join.

Q. The other 10 percent you did ask to join?

A. Yes, and they joined. * * *

Q. You figured that your duty as a steward or trustee was to get the men in the Union?

A. The job of the steward is take up trouble with the Union between them and the agreement with the Company.

hence for the Union's paper majority. Since the Union's majority was procured with the direct and open assistance of a supervisory employee, it cannot be said to represent the free and untrammelled will of the employees and hence cannot be recognized as valid majority.⁷

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Wells, Inc., Reno, Nevada, and its officers, agents, or successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, or any other labor organization, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment;

(b) Threatening employees with economic reprisal because of their activities on behalf of the

⁷We refused to grant a petition in a representation case and direct an election where the record disclosed that the petitioning labor organization relied, in support of its claim of a substantial representation upon authorization cards secured with the assistance of a supervisory employee. Matter of the Toledo Stamping & Manufacturing Company, 55 N. L. R. B. 864; Cf. N. L. R. B. v. Dadourian Export Corporation, 138 F. 2d, 981 (C. C. A. 2).

above-named or any other labor organization;

(c) Interrogating employees concerning their membership or other activities in or on behalf of the above-named or any other labor organization;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Jack Benton immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Jack Benton for any loss of earnings he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Post at its plant at Reno, Nevada, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the

Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in an appropriate unit.

Signed at Washington, D. C., this 12 day of June 1946.

PAUL M. HERZOG,
Chairman

JOHN M. HOUSTON,
Member,

[Seal]

NATIONAL LABOR RELATIONS BOARD.

Gerald D. Reilly, dissenting:

For the reasons hereinafter stated, I cannot accept the conclusion of the majority that the respondent discharged Foreman Benton because of its desire to discourage union membership and activities of its rank and file employees, and that the discharge was violative of Section 8(3) of the Act.

That Benton's discharge was not intended to discourage membership in the rank and file Union appears from the uncontroverted evidence showing that another foreman, who had authority to hire and discharge and who was a member of the same Union, was not discriminated against. Also, Benton's successor, at the time of his promotion to Benton's position, was a member of the same Union and his membership in the Union must have been known to the respondent. The respondent's hostility towards the Union, as shown by anti-union statements of its officials, also cannot provide a reasonable basis for the inference drawn by the majority. It was not so strong as to prevent them from entering into a collective bargaining agreement with the Union for the respondent's Luning division. The same officials entered into another collective bargaining agreement with the Union in behalf of one of the respondent's affiliates. The respondent also operated its Reno division, which is involved in this proceeding, under a collective bargaining agreement with the Teamster's Union covering its line drivers. Nor do I believe that the circumstance that Benton received no warning not to engage in his unlawful activities,

or that he was denied his request for demotion, or was not permitted to remain in his position at a normal salary, betrays an intent to discourage membership in the rank and file Union. What it might indicate is that the respondent intended to discourage any activities in behalf of the rank file Union by another foreman. But even assuming that indirectly Benton's discharge might have discouraged union membership and activities by removing from its ranks its most active member and also by discouraging membership in the Union by foremen, it still does not follow that the respondent could not terminate Benton's activities by discharging him, for, as it will be shown, they were activities prescribed by the Act.

While the record does not support the conclusion of the majority that Foreman Benton's discharge was due to discriminatory reasons, it furnishes ample support for the conclusion that, under the circumstances disclosed by the record, Benton's activities in behalf of the rank and file Union were activities proscribed by the Act, and that his discharge, therefore, was not violative of the Act. Since April 1943, and until his discharge on January 31, 1945, Benton was employed by the respondent as foreman in charge of its Reno shop. As such foreman, Benton directed and assigned work of "every man . . . in the shop." At the hearing, the parties stipulated that Benton had authority to hire and discharge his subordinates, that he had exercised that authority and excluded him from the bargaining unit. Of his union membership and activities the record discloses that Benton joined the Union in October 1943 and

did not relinquish his membership in the Union upon his promotion to the position of foreman. At the time of his discharge, Benton was one of the trustees of the union local and the union shop steward. He openly wore his union button at work most of the time. Benton also admitted that he talk to his subordinates about the Union and asked some of them to join the Union, and that he didn't ask the other employees to join because they didn't have money to join.⁸ Finally, Benton, was one of the first to sign the employees' petition of December 18, 1944, designating the Union as their bargaining representative.

That Benton's activities in behalf of the rank and file Union are proscribed by the Act is clear.⁹ They had a tendency to coerce the rank and file employees under his supervision in the exercise of their rights to self-organization. As a management representative, Benton possessed a power to hire, promote,

⁸See footnote 6 in the majority opinion.

⁹Had Benton's activities been in furtherance of self-organization and collective bargaining among supervisory employees, they would have been protected activities under the recent decisions of the Board. Benton, however, was engaged in activities in furtherance of organization of rank and file employees. Since Benton was a part of the management his conduct was attributable to his employer when it interfered with the rights of the rank and file employees to self-organization and collective bargaining. (Cf. Matter of Soss Manufacturing Company, 56 N. L. R. B. 348; Matter of American Steel Foundries, 67 N. L. R. B., No. 2.)

discharge, or alter the terms and conditions of their employment. Conscious of that power, these employees would normally be reluctant to refuse his suggestions to join the Union. Since Benton's activities constituted interference with the free choice of the respondent's employees, the respondent was bound to terminate Benton's activities in behalf of the rank and file union in any manner it deemed appropriate. Nor was there anything optional about this course of conduct. The respondent was under an affirmative duty to terminate coercive activities of its representative interfering with the employees' freedom to self-organization. And this is exactly what the respondent did.¹⁰ Such being the case, the respondent's motives for terminating Benton's unlawful activities by a discharge become entirely irrelevant. So long as the employer was doing only what the Act commanded him to do, i.e., to refrain from coercing his employees in the exercise of their right to self-organization, either directly or through his agents, the actual motivation for his conduct is beside the point.¹¹

¹⁰The record is clear that Benton's membership and activities in behalf of the rank and file union were known to the respondent's officials prior to his discharge. Indeed, at the December 22, 1944, collective bargaining conference respondent's President Wells told the union representatives that it was Benton who "was responsible for [the respondent's] employees being members of the Union and wishing to be represented by it."

¹¹While I agree with the majority that Benton's supervisory status did not relieve the respondent from its obligation not to discourage by discrimina-

Nor is the circumstance that Benton was never warned against engaging in activities in behalf of the rank and file union an indication that Benton's discharge was due to discriminatory motives and affected the respondent's right to discharge Benton. In my dissent in the American Steel Foundries case ¹² I had an occasion to deal with this particular question. I have pointed out in that case:

The Act imposes upon an employer a duty to refrain from interference in, or domination of, a labor organization of its employees and we have, since the beginning of our enforcement of the Act, imputed to the employers the responsibility for acts violative of this duty committed by supervisors. Such a "company policy" we have therefore found to be inherent in every employer's labor policy, re-

tion the membership in the rank and file union, the cases cited by the majority are distinguishable from the situation in the instant case in that there the employer had discriminated against the supervisory employee because of his refusal to comply with the employer's unlawful demand, such for instance, as a demand to assist the employer in his anti-union campaign (Matter of Reliance Mfg. Company, 60 N. L. R. B. 946, and Matter of Vail Mfg. Company 61 N. L. R. B. 181) or to relinquish supervisory employee's membership in the rank and file union, where such membership was retained for purposes of pension rights or transfer privileges (Matter of Climax Engineering Company, 66 N. L. R. B., No. 165). In the instant case, no such unlawful request was made by the respondent. Quite to the contrary, in terminating Benton's activities, the respondent only acted in compliance with the mandate of the Act.

¹²67 N.L.R.B. 2.

quiring no promulgation, publication or explanation.

It is for this reason that Foreman Benton must have presumed to know that his activities in behalf of the rank and file union were unlawful, jeopardized the neutrality of his employer and were in violation of his duties to the employer. No warning, therefore, was necessary to put Benton on notice that his conduct was both unlawful and disloyal to his employer.

Moreover, the respondent could have terminated Benton's activities in behalf of the rank and file union by discharging him also because they compromised its neutrality. The record shows that there was a jurisdictional dispute between the Union and its rival, the Teamsters' Union, both of whom claimed jurisdiction over the respondent's employees in certain classifications and that the respondent was informed by a representative of the Teamsters' Union that the respondent "will get into trouble if [it] negotiated with the Machinists . . . [in behalf of the disputed classifications]." Under these circumstances, it was perfectly natural for the respondent to accept the advice of its counsel and take measures for the protection of its neutrality thereby forestalling the probability of filing unfair labor charges.¹³ As the Board pointed out in the Soss case "the right under the Act of supervisors to protection in their organizational and

¹³Cf. *Matter of Soss Manufacturing Co.*, *supra*; *Matter of Climax Engineering Co.*, *supra*; *Matter of American Steel Foundries*, *supra*.

other concerted activities is not unqualified one, but is subordinate to organizational rights and freedom of rank and file employees, and to need of employer to maintain his neutrality." Since Benton has engaged in activities in behalf of the rank and file union in his capacity as a management representative, and since his activities were not protected by the Act, the respondent was at liberty to take any steps for the protection of its neutrality it alone deemed appropriate. The other alternative suggested by the majority in Matter of Climax Engineering Co. case, i.e., the scrutiny of the employer's conduct for the purpose of finding whether the measures taken from the preservation of his neutrality were or were not "appropriate measures," would be unjustified and constitute an unwarranted encroachment upon the prerogatives of the management.

The majority contends that we do not have to deal with the question as to whether Foreman Benton's discharge could be justified for the reason that his activities in behalf of the rank and file union were unlawful, since the respondent neither assigned to Benton, nor claimed either in the pleading or in its evidence that it discharged him for that reason. I disagree. The respondent's counsel did raise this question in his brief to the Board, in which he questioned the soundness of the Trial Examiner's conclusion in the following words: "We cannot believe that an employer cannot discharge or discipline an executive or foreman participating and soliciting union membership." The counsel

also asserted in his brief that such activities of a foreman would have subjected the respondent to the charges of unfair labor practices. During the oral argument before the Trial Examiner and in its brief to the Trial Examiner, the counsel for the respondent also argued that to have permitted Benton to remain in its employ, after it became aware that Benton was soliciting for the Union, would have comprised its neutrality and caused it to be liable for unfair labor practices. Counsel for the respondent also stated during the oral argument that he did so advise President Wells before Benton's discharge. Regardless, however, of the fact whether or not the issue was properly raised by the respondent, I am convinced that the majority opened it for a determination by rejecting the respondent's explanation for Benton's discharge and by imputing to the respondent a discriminatory motive in discharging Benton. Nor am I prepared to concede that it is the duty of an employer under all circumstances to disclose to the discharged employee the reason for his discharge.

Under broad implications of the decision reached by the majority, the principle of imputation to the employer of responsibility for the acts and statements of supervisory employees cannot longer prevail, if foremen are free to engage in activities in behalf of a rank and file union. By protecting the supervisory employees, who have authority to hire, discharge, and otherwise effect the tenure and conditions of employment, in their activities in behalf of the rank and file union, the majority has also

impaired the basic principle, essential for the preservation of employees' freedom to join a labor organization or select their bargaining representative of their choice.

Signed at Washington, D. C. this 12 day of June 1946.

GERARD D. REILLY,

Member.

National Labor Relations Board.

“APPENDIX A”

NOTICE TO ALL EMPLOYEES PURSUANT
TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act. we hereby notify our employees that:

We Will Not discourage membership in International Association of Machinists, or any other labor organization, by discharging or refusing to reinstate any of our employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not threaten our employees with economic reprisal because of their activities on behalf of the above-named or any other labor organization.

We Will Not interrogate our employees concerning their membership or other activities in or on

behalf of the above-named or any other labor organization.

We Will Offer to Jack Benton immediate and full reinstatement to his former or a substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain members of the International Association of Machinists, or any other labor organization.

WELLS, INC.

Employer

By

Representative (Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

WALLACE E. ROYSTER,
for the Board.

LOUIS H. CALLISTER,
of Salt Lake City, Utah, for the Respondent.

K. C. APPERSON,
of Oakland, Calif., for the Union.

INTERMEDIATE REPORT

Statement of the Case

Upon a first amended charge duly filed on August 9, 1945, by International Association of Machinists, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region (San Francisco, California), issued its complaint on August 9, 1945, against Wells, Inc., Reno, Nevada, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the first amended charge, together with notice of hearing thereon,

were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) on or about May 16, 1944, and at all times thereafter, and specifically on October 5 and December 22, 1944, refused to bargain collectively with the Union as the exclusive representative of its employees in a certain appropriate unit, although a majority of its employees in the said unit had designated the Union as their representative for such purpose; (2) during December 1944 and January 1945, (a) disparaged the Union, (b) ordered its employees to refrain from discussing the Union in the shop, (c) discriminatorily refused to allow a representative of the Union upon its premises, (d) threatened to move its plant from Reno, Nevada, to Salt Lake City, Utah, (e) questioned its employees with respect to their membership in the Union, and (f) ridiculed one of its employees for wearing a union button; (3) on January 31, 1945, discharged Jack Benton, and thereafter refused to reinstate him, because of his membership and activity in behalf of the Union; and (4) by the foregoing acts and conduct, interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

The answer duly filed by the respondent on August 20, 1945, admitted all the allegations of the complaint pertaining to the corporate existence of the respondent and the nature, character, and extent of the business transacted by it and certain

other factual matters, but denied the commission of unfair labor practices.

Pursuant to notice, a hearing was held on August 24 and 25, 1945, at Reno, Nevada, before the undersigned Trial Examiner, Howard Myers, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel; the Union by a representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of the hearing, Board's counsel moved to conform the pleadings to the proof with respect to minor matters, such as correction of typographical errors, misspelling, and the like. The motion was granted without objection. Oral argument, in which counsel for the Board and for the respondent participated, was heard at the conclusion of the taking of the evidence and is part of the record. A brief was filed by the respondent.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the respondent

Wells, Inc., a Nevada corporation, has its principal office and place of business in Reno, Nevada,¹

¹ The respondent also operate plants at Luning, these plants, however, are not involved in the pro-Nevada, and at Elko, Nevada. The employees of ceeding herein.

where it is engaged in the transportation of freight between the States of Nevada and California. During the 12-month period ending June 30, 1945, the respondent transported 194,577 tons of freight, 72.8 per cent of which was transported in interstate commerce.

The respondent concedes that during all the times material herein, it was, and still is, engaged in commerce within the meaning of the Act.

II. The organization involved.

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

III. The unfair labor practices.

A. The refusal to bargain collectively.

1. The appropriate unit.

At the hearing, the parties stipulated, and the undersigned finds, that all the mechanics, mechanic helpers, and mechanic apprentices employed by the respondent at its Reno, Nevada, shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge, or effectively recommend such action, constitute a unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

The parties at the hearing stipulated that eight named persons whose names appear upon the respondent's pay roll of December 15, 1944, should be included in the unit as coming within the above

description.² Board's counsel maintained that, in addition to these eight, E. S. Casinella, C. H. McBride, and R. H. Wilson should also be included in the unit. The respondent contended that they should be excluded. The credible evidence clearly shows that on December 15, 1944, Casinella was and at all times thereafter has been, a foreman with authority to hire and discharge and that he exercised that authority on various occasions. Regarding McBride and Wilson, Jack Benton, their foreman and the Union's shop steward, testified, and the undersigned finds, that McBride, during all the times material herein, was a blacksmith's helper and that he did very little mechanical work, and that 70 to 80 per cent of Wilson's time was devoted exclusively to mechanical work. Under the circumstances, the undersigned finds that Wilson should be included in the unit and McBride and Casinella excluded.

2. Representation by the Union of a majority in the appropriate unit.

A list prepared by the respondent, and introduced in evidence by Board's counsel, contains the names of all the persons in the respondent's employ

² Namely, A. B. Gandrud, G. W. Hollenback, C. Haverland, Oran Ellis, Ralph Mudge, E. F. Staats, S. E. Tower, and Albert McFadden. The December 15, 1944 pay roll was agreed upon because it became evident at the hearing that the refusal to bargain took place on December 22, 1944, if at all. It was also stipulated by the parties that the persons whose names appeared on the December 15, 1944 pay roll and who were in the appropriate unit, were still in the respondent's employ on December 22, 1944.

on December 15, 1944, in the unit hereinabove found appropriate. The parties stipulated at the hearing, and the undersigned finds, that these persons were still in the respondent's employ and were performing the same work on December 22, 1944. On behalf of the Board there were offered and received in evidence 11 signed cards expressly authorizing the Union to represent the signers for collective bargaining. The authenticity of the signatures on the cards was not challenged.

The undersigned has compared the names appearing on the cards with the list submitted by the respondent and received in evidence as a Board exhibit and finds that, as of December 15, 1944, five employees in the appropriate unit had, on that date, signed cards designating the Union as their collective bargaining representative.³ Furthermore, there was also received in evidence a petition, dated December 18, 1944, reading as follows:

TO WHOM IT MAY CONCERN

We, the under-signed, employees of Wells, Inc. Reno, Nevada, do here-by authorize the International Association of Machinists A. F. of L. Local 801, known as the Machinists Union, to act as our sole bargaining agent in all matters pertaining to wages and working conditions.

This petition bears the signatures of seven persons in the appropriate unit. The authenticity of

³ Three signed authorizations on June 3, and two on October 4, 1944.

these signatures was not questioned.⁴ The undersigned accordingly finds that on December 15, 1944, and at all times thereafter, the Union was the duly designated collective bargaining representative of the respondent's employees in the unit found to be appropriate. Pursuant to Section 9(a) of the Act, the Union was, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, hours of employment, and other conditions of employment.

3. The refusal to bargain.

On May 16, 1944, after T. E. McShane and Glen Anderson, representatives of the Union, and J. W. Wells, the respondent's president, had concluded the execution of a collective bargaining contract covering the employees of Wells Cargo, Inc., a corporation owned and operated by the stockholders and officers of the respondent, McShane requested Wells to enter into a similar contract covering the respondent's Reno employees. After a brief discussion of the provisions of the contract, during which discussion Wells stated that the respondent would be unable to pay the wages granted the Wells Cargo, Inc., employees,⁵ and that the unit was not appropriate, the parties agreed to meet and confer at a later date. Before the meeting concluded,

⁴ This petition was offered in evidence by the respondent.

⁵ The plant of Wells Cargo, Inc., is located at Las Vegas, Nevada.

however, McShane pointed out to Wells that the unit sought for the Reno employees was the same unit agreed to in the contract just executed.⁶

On August 8, 1944, McShane sent the following letter to Wells at his Las Vegas offices:

This communication serves as notice that Lodge No. 801, International Association of Machinists, Reno, Nevada represents the Mechanics employed by you in both of your Reno shops, and hereby request that you meet with our Representatives for the purpose of negotiating an agreement between your Company and Lodge No. 801, covering the employees performing work coming under the jurisdiction of the Internatitonal Association of Machinists.

All of the above mentioned employees are represented by Lodge No. 801 and we will submit proof of this representation at the first meeting with you.

I was informed by Mr. Howard Wells, of your Company that you would not be in Reno for some

⁶ Sections A and B or Article I of the Wells Cargo, Inc. read as follows:

Section A

The company recognizes the Union as the sole collective bargaining agency for all employees performing work which comes under the jurisdiction of the I. A. of M.

Section B—Machinists Jurisdiction

The company recognizes the jurisdiction of the Machinists as that contained in the Constitution of the International Association of Machinists, effective April 1, 1942, between pages V and X, inclusive.

time to come, but that your duties would require your presence in Las Vegas, and suggested that I contact you in regards to this matter, as you are the only one who has authority to decide matters of this kind.

I talked to some of your mechanics and it is my opinion that it will be to the best interests of all concerned to have this agreement signed as soon as possible.

In view of your inability to come to Reno, I will meet you in Las Vegas, at your earliest convenience, if you can meet me Monday or Tuesday of next week at Las Vegas, advise by mail, to T. E. McShane, 1115 Sierra St. Reno, Nevada, c/o Geo. E. McKay, Secretary Lodge No. 801, I. A. of M.

The respondent did not answer this letter. Wells testified at the hearing that he did not see the letter until his return from his vacation some time in September.

In the latter part of September, McShane and George McKay, the financial secretary and business agent of the Union's Reno, Nevada, local, called upon Howard Wells and his brother, Robert, the respondent's vice-president and secretary respectively. There McShane presented to the Wells brothers a copy of the Wells Cargo, Inc., contract and stated that the Union would like to enter into a similar contract covering the respondent's Reno employees. The meeting concluded when one of the Wells brothers stated that his brother, J. W. Wells, was the only one with authority to negotiate

a collective bargaining contract and that McShane should see him.

On October 4, McShane and Anderson again met with J. W. Wells at the offices of Wells Cargo, Inc. There McShane presented Wells with a copy of the Wells Cargo, Inc. contract and again asked him to enter into a similar contract for the respondent's Reno employees. McShane also presented Wells with authorizations signed by the respondent's Reno employees designating the Union as the collective bargaining representative. After reading the authorizations, Wells stated, "Hell, you've got everybody on there but me." After some discussion, Wells stated that he was agreeable to all the provisions of the proposed contract except the provision respecting overtime rates and that since the respondent's operations came under the jurisdiction of the Interstate Commerce Commission the respondent need not, and would not, pay overtime rates for work performed over 40 hours per week. McShane then showed Wells certain signed contracts which the Union had with other trucking companies in the vicinity of the respondent's shop wherein the companies contracted to pay overtime rates for all work performed over 40 hours per week. After reading these contracts, Wells stated, to quote the credible testimony of McShane, "Well, the boys in Reno are going to have to operate that business. I am not going to tie them up to any conditions without them being in on the deal. I will meet you in Reno in about ten days and at that time in company with Bob and Howard we will

resume negotiations." McShane then told Wells that the unit sought by the Union consisted of all the persons "doing mechanical work in the body shop as mechanics" and that the Union was willing to change the "Machinist Diesel specialist" classification, to which Wells had objected, to "automotive machinist." Wells, while not specifically agreeing to the suggested change, stated that he would discuss the change with McShane at a later meeting.

At the conclusion of the meeting, McShane went to Reno to await word from J. W. Wells. Not hearing from him, McShane, on October 30, 1944, telegraphed him as follows:

Important That You Meet Me Here at Once.
Wire When You Can Be Here.

Several days later, Wells replied:

You Promised at Least Ten Days Notice Before Meeting Impossible to Get Away for at Least Two Weeks Will Be in Inyokern Salt Lake City and Denver in the Meantime Will Contact You When Available.

Upon the receipt of Wells' telegram, McShane telegraphed the Conciliation Service of the United States Department of Labor requesting that a conciliator be sent for the purpose of adjusting the matter between the Union and the respondent. On or about November 8, a conciliator conferred separately with the parties but nothing was accomplished. On December 22, a conciliator met with the parties and, according to McShane's credible

testimony, the following transpired at that meeting:

Q. Will you give us your recollection of these conversations?

A. Mr. Curtin, Commissioner Curtin informed the Wells the purpose of calling them and discussion started between Mr. Joe Wells and myself, and I don't recall the discussion word by word, but the things that were discussed was at that time that Mr. Wells then brought up the question "Do you represent the people?"

We again referred to the authorizations from their employees and Mr. Wells, after studying a while, said, "Well, I guess I will go ahead and negotiate." Which we proceeded to do. However, after discussing, I would say failing to agree on various articles that he had agreed to in Las Vegas, Mr. Wells, at this December 22nd meeting, demanded that we submit a new agreement with an open shop clause and without the overtime clause where it applied to 40 hours and 8 hours per day, and also the rate of pay, and at that time he asked me again what unit we petitioned for, and at that time I told him that we still petitioned for the same unit that we had told him about in Las Vegas on October 5th, which would be mechanics, automotive machinists, and welders, the helpers of all classifications, and all the employees in the body shop that were doing mechanical work we considered were all of the employees.

Q. Did Mr. Howard Wells or Mr. Joe Wells or any of the Messrs. Wells who were present make any comment about that unit?

A. Sometime shortly after the meeting started, Mr. Howard Wells got up and left the room. He was gone for a period of time, I do not know the exact period that he was gone for, but in a little while he came back and came into the room and called Mr. Joe Wells out of the room, and Mr. Joe Wells went out of the room and they were gone possibly a half hour, maybe not that long. They were gone quite a little while and during their absence Mr. Curtin got up and walked the floor and said he thought that was a little unusual, he couldn't imagine what they were doing, one thing and another. He seemed to be a little dissatisfied about being put on the spot there.

Mr. Callister (Respondent's Counsel): Just state the conversatiton.

Q. By Mr. Royster (Board's Counsel): Just what occurred in the presence of the Wells?

A. Mr. Joe Wells came back and said that they had been out and talked to their employees. They found out that some of them didn't wish the Union to represent them and that they would not at that time recognize us as representing his employees, but would demand an election before they would go any further.

Trial Examiner Myers: Then what happened?

The Witness: The argument broke out over again, the Commissioner who was conducting the case stated that he thought the authorizations looked authentic and I think he suggested, in fact I know he suggested that they continue with the negotiations, that the actions of the Wells brothers

in going out and talking to their employees at that time was rather unbecoming and he suggested that we continue with the negotiations. The Wells brothers refused to do so and at that time they brought up the question of Jack Benton again. Their contention was that Jack Benton was a foreman. The Union's contention was that Jack Benton was a mechanic by the fact that while he did do some of his duties which were of a supervisory nature, that the majority of the duties performed by Jack Benton were that of a journeyman mechanic and he worked with the tools the majority of his time.

The Wells stood on their contention that he was a supervisory employee and did not belong in the Union. One discussion brought on another one and Joe Wells made the statement that Jack Benton was responsible for his employees belonging to the Union, that during the lunch hour he talked it to all the employees, talked Union to the employees during the lunch hour and that Mr. Benton was a first class foreman, he did a good job for them and that his work was satisfactory in every way but he still felt that he was the one that was responsible for their employees being members of the Union and wishing to be represented by it.

Q. Was there anything in any of the conversations about Salt Lake City?

A. Mr. Wells stated at one time——

Q. (Interposing) Which Mr. Wells was this?

A. Mr. Joe Wells.

Q. All right.

A. Mr. Joe Wells stated that before that they would submit to any of the conditions that we asked for that he would move his operation to Salt Lake City.

Q. Do you have any present recollection of anything else that occurred at this meeting?

A. At this time I can't recall anything further that transpired at that meeting.

It is apparent from the foregoing facts that the Union on May 16, 1944, and on several occasions thereafter, requested the respondent to bargain collectively. It is equally apparent that the respondent each time sought to postpone negotiations, and on December 22, 1944, admittedly refused to recognize the Union as the exclusive collective bargaining representative of the respondent's employees. The Act requires an employer to bargain, upon request, with the representative designated by a majority of his employees, unless, as the Board and the Courts have held, the employer in good faith questions the appropriateness of the claimed unit or the majority status of the representative, and the representative, upon request, fails satisfactorily to show by some reasonable method that it represents a majority of the employees in the appropriate unit. But if the claimed representative in fact represents a majority of the employees in the appropriate unit, the employer has the burden of proving that he raised the question in good faith and that the representative failed to show its majority status. This burden the respondent has failed to discharge. The facts, on the other hand, indicate bad faith on its

part. The Union submitted proof of its majority status to J. W. Wells, who exclaimed upon examining it "Hell, you've got everybody on there except me." Although the respondent at several of the conferences appeared to be advancing bona fide doubts as to the appropriateness of the unit, the undersigned cannot consider those conferences as isolated instances but must regard them in relation to all other factors in the case. Consideration of the sequence of events in the preceding paragraphs when viewed against the background of anti-union statements and activities, as set forth herein, leads the undersigned to conclude that the respondent followed a plan calculated to eliminate the Union as the collective bargaining representative of the employees. The undersigned is satisfied from the events occurring up to and including January 31, 1945, the date when, as found below, Jack Benton was discriminatorily discharged, that the respondent, on May 16, 1944, and thereafter had no genuine intention of recognizing or dealing with the Union, but instead sought to thwart the Union's organizational plans. The undersigned further finds that the respondent's questioning of the appropriateness of the unit was not advanced in good faith, but was used to delay the Union's recognition as the collective bargaining representative of the respondent's employees. Upon the entire record in the case, the undersigned finds that on December 22, 1944, and at all times thereafter, the respondent refused to bargain collectively with the Union as the representative of the respondent's employees in the ap-

propriate unit and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Interference, restraint, and coercion; the discriminatory discharge of Jack Benton.

Benton was first employed by the respondent as a mechanic on August 17, 1942, at a salary of \$250 per month. About the middle of April 1943, he was promoted to foreman and his salary was raised to \$325 per month. About 6 or 8 months thereafter his salary was raised to \$350 per month. On January 1, 1945, his salary was raised to \$375 per month.

About the beginning of December 1944, H. B. Divine became shop superintendent. Upon assuming his duties as superintendent, Divine was introduced to Benton by Howard Wells, who told Divine, in Benton's presence, that Benton has been "cooperating" with Robert Wells "100 per cent."

Sometime in January 1945, Benton approached Divine and the following conversation between them ensued, according to the credible testimony of Benton:⁷

Well, I told him [Divine] that I would like to talk to him about the foreman job. I said, "There's mechanics getting \$350 a month and I am getting \$375 a month, and I am on call 24 hours a day. I take the dirtiest part of the road work on the mountain, I never put the dirty one off and take the good ones." And I said, "I wonder if you get

⁷Divine's version of what was said during this conversation is substantially the same as Benton's.

me a little more money. There is not enough difference between the mechanics and myself. I come down here and get held up and work overtime and they work 8 hours a day, six days a week, for \$350, and I work 6 days a week and overtime and I just get \$25 more than they do and I wondered if I could get some more money." If that wasn't satisfactory, I wondered if he could get another foreman and give me a job back as a mechanic. In fact, we had talked about just indirectly of me going back to night shift. We were having quite a little bit of trouble and fellows, we didn't have the qualified men, and he said, "Well, I will see what I can do." And he said, "I think everything can be arranged and don't worry."

Divine made no effort to obtain an increase in salary for Benton. Instead he discharged Benton on January 31. At the time of Benton's discharge the following took place, according to Benton's credible testimony:⁸

... Mr. Divine called me over to one side and I walked over, and he said to me, he said, "Well, Jack, I guess you will be relieved of your shop foreman duties." And I said, "Why, that is just fine." I said, "It wasn't worth it anyway. The mechanic job is best." And I said, "What shift do you want me to work?" And he said, "Well, I don't think it would work out, Jack, if I put you on another shift as a mechanic. I have worked in

⁸Divine's version of this conversation is likewise substantially the same as Benton's.

shops and I have run men and I have seen it tried and it hasn't worked." And he said, "I don't think it would work out."

I says, "Well, I worked for Mr. Richer⁹ and I think I can work for you." And he said, "Well, I don't think it would." And I said, "In other words, you mean that I am fired?" And he said, "If you look at it that way, yes." And I said, "Thank you." That is all there was.

Benton was one of the most active members of the Union. He was one of its trustees and a shop steward. His membership and activity were well known to the respondent. According to the undenied and credible testimony of McShane, J. W. Wells said at the December 22 meeting that Benton was a first class foreman, that he did a good job for the respondent, that his work was satisfactory in every way, but that Benton "was the one that was responsible for [the] employees being members of the Union and wishing to be represented by it."¹⁰ Furthermore, Robert Wells, in a conversation with Benton in December 1944, which was held in the presence of the other employees on the day shift, said, according to Benton's undenied and credible testimony, "Unions were lousy, Unions would keep a good man down and promote a sorry man." On

⁹Richer was the superintendent whom Divine replaced. Benton worked as mechanic and as foreman under Richer.

¹⁰At no time was Benton requested by any official of the respondent to discontinue his Union membership or activity because of his supervisory status.

another occasion in December 1944, Robert Wells asked Benton what that yellow thing was on his sweater, adding, "Did a bird fly over you?" Benton replied, "No, it's a Union button, the men wear them." The respondent's antipathy for the Union is also clearly shown by Robert Wells' action in ordering George McKay out of the shop in December 1944, when the latter went there to collect dues from the employees during lunch hour. This treatment of McKay was, according to the undenied and credible evidence, directly opposite to that afforded representatives of other unions when they went into the shop to collect dues.

During the oral argument at the end of the hearing, and in its brief, respondent urged that to have permitted Benton to remain in its employ after it became aware that Benton was soliciting for the Union, would have compromised its neutrality and caused it to be liable for unfair labor practices. But it is clear from the evidence that this was not the motivating factor which led to Benton's discharge. It is significant, in this connection, that at no time was Benton warned that failure to discontinue these activities might result in discipline or discharge, nor was any order or advice given Benton to discontinue them. It is hardly likely that it would have failed to indicate its position in the matter to Benton had it been concerned in the manner it now urges. On the contrary, its antipathy to the Union, as reflected by the facts herein found, indicates that what it objected to was the union activity as such. Under these circumstances the respondent's argument on the point fails.

The respondent's contention that it would have adversely affected Benton's and the other employees' morale if the respondent had reduced Benton to the status of a non-supervisory employee in accordance with his request is not supported by the record. The undersigned is convinced and find that Benton was discharged on January 31, 1945, because he was a member and active in behalf of the Union and for no other reason. The undersigned further finds that by making the anti-union statements set forth above, by questioning the employees regarding their union affiliations, by discharging Benton,¹¹ and by refusing to bargain collectively with the Union as the representative of its employees, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to the trade, traffic, and commerce between the several States, and such of them as have been found to be unfair practices tend to lead to labor disputes

¹¹As the Circuit Court of Appeals for the Seventh Circuit in *N.L.R.B. v. Automotive Maintenance Machinery*, 116 F. (2d) 350, 353 observed: "No more effective form of intimidation nor one more violative of N.L.R. Act can be conceived than discharge of an employee because he joined a Union . . ."

burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the respondent has discriminated in regard to the hire and tenure of employment and the terms and conditions of employment of Jack Benton by discharging him on January 31, 1945, the undersigned will recommend that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. The undersigned will further recommend that the respondent make Jack Benton whole for any loss of earnings he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would have normally earned as wages from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings¹² during that period.

¹²By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but

Having found that the respondent refused to bargain collectively with the Union on December 22, 1944, it will be recommended that the respondent, upon request, bargain collectively with the Union as the exclusive representative of all the employees in the unit heretofore found appropriate.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2(5) of the Act.

2. All mechanics, mechanics helpers, and mechanic apprentices employed by the respondent at its Reno, Nevada, shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge, discipline, or effectively recommend such action constituted, and now constitutes, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

3. International Association of Machinists was

for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

on December 15, 1944, and at all times thereafter, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

4. By refusing on December 2, 1944, and at all times thereafter, to bargain collectively with the International Association of Machinists, as the exclusive representation of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Jack Benton, thereby discouraging membership in International Association of Machinists, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Wells, Inc., Reno, Nevada, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to the hire or tenure of employment or any term or condition of employment.

(b) Refusing to bargain collectively with International Association of Machinists, affiliated with American Federation of Labor, as the exclusive representative of all the respondent's mechanics, mechanic helpers, and mechanic apprentices employed by the respondent at its Reno, Nevada, shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge discipline, or effectively recommend such action;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist the International Association of Machinists, affiliated with American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of this Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act.

(a) Upon request bargain collectively with International Association of Machinists, affiliated with American Federation of Labor, as the exclusive representative of all the mechanics, mechanic helpers, and mechanic apprentices employed by the respondent at its Reno, Nevada, shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge, discipline, or effectively recommend such action;

(b) Offer to Jack Benton immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges in the manner set forth in "The remedy";

(c) Make whole, in the manner set forth in "The remedy," Jack Benton for any loss of earnings he may have suffered by reason of the respondent's discrimination against him;

(d) Post at its Reno, Nevada, shop, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Twentieth Region shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the receipt of this Intermediate Report what steps respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue

orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated: October 17, 1945.

/s/ HOWARD MYERS,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss

of pay suffered as a result of the discrimination. Jack Benton.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is all mechanics, mechanic helpers, and mechanic apprentices employed by the respondent at its Reno, Nevada, shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge, discipline, or effectively recommend such action.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

WELLS, INC.

(Employer)

Dated..... By.....
(Representative) (Title)

Note:

Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in

acordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Edward J. McGovern, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 12th day of June, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision & Order [and Intermediate Report] to the following-named persons, addressed to them at the following addresses:

Louis H. Callister, Esquire, 619 Continental Bank Building, Salt Lake City, Utah.

International Association of Machinists, Union No. 801, Att. Mr. K. C. Apperson, 306 Pacific Building, Oakland, California.

/s/ EDWARD J. McGOVERN

Subscribed and sworn to before me this 12th day of June, 1946.

/s/ MERLE J. SMITH

Designated Agent for the National Labor Relations Board.

(Signed Post Office return receipts No. 69873 and 69874 attached.) [32]

Before the National Labor Relations Board
Twenties Region
No. 20-C-1306.

In the Matter of:

WELLS, INC.

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS.

U. S. ATTORNEY'S OFFICE
Third Floor, Post Office Building
Reno, Nevada

Friday, August 24, 1945.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a. m.

Before:

Howard Myers, Esq., Trial Examiner.

Appearances:

WALLACE E. ROYSTER, Esq., San Francisco, California, appearing on behalf of the National Labor Relations Board.

K. C. APPERSON, 306 Pacific Building, Oakland, California, International Representative, appearing on behalf of Machinists Union #801, the Charging Union.

LOUIS H. CALLISTER, Esq., 619 Continental Bank Building, Salt Lake City, Utah, appearing on behalf of Wells, Inc., the Respondent.

PROCEEDINGS

Trial Examiner Myers: I would like to announce that this is a formal hearing before the National Labor Relations Board in the matter of Wells, Inc., and International Association of Machinists, Case No. 20-C-1306.

The Trial Examiner appearing for the National Labor Relations Board is Howard Myers. Will counsel please state their appearances for the record?

Mr. Royster: Wallace E. Royster, 1095 Market Street, San Francisco, for the Board.

Mr. Apperson: K. C. Apperson, 306 Pacific Building, Oakland, California, for the Machinists.

Trial Examiner Myers: Are you an attorney, Mr. Apperson?

Mr. Apperson: No.

Trial Examiner Myers: Just a representative?

Mr. Apperson: That is all.

Trial Examiner Myers: International Representative?

Mr. Apperson: That is right.

Mr. Callister: Louis H. Callister, Attorney-at-Law, Continental Bank Building, Salt Lake City, Utah, for the Respondent, Wells, Inc.

Trial Examiner Myers: Any other appearances to be noted?

I would like to announce further that the Official Reporter makes the only official transcript of these [3*] proceedings. Citations in briefs or arguments

* Page numbering appearing at top of page of original certified Transcript of Record.

based upon the record directed to the Trial Examiner or to the Board must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a written stipulation concerning such matters after the close of the hearing, but before the transfer of the case to the Board, such stipulations or motions must be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off-the-record [4] discussion or argument will not be included in the official transcript unless an order to that effect be

made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner, not to the Official Reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings and upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

All exhibits offered in evidence shall be in duplicate.

At the close of the hearing I will expect counsel to argue orally during which argument I will feel free to discuss with and ask questions of counsel with respect to their contentions as to the issues, the facts, and the legal principles involved. The oral argument will be included in the stenographic report of the hearing.

Any party shall be entitled upon request made before the close of the hearing to file a brief with the Trial Examiner within five days of the close of the hearing unless the time is extended by the Trial Examiner. Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner in Washington. [5]

During the course of the hearing I will undoubtedly ask questions of the various witnesses. I want counsel to feel free to object to any of my questions if they think the questions are improper in the

same manner and with the same freedom as if the questions were propounded by counsel.

You may proceed, Mr. Royster?

Mr. Royster: Mr. Examiner, I have to offer in evidence initially the formal pleadings in this case, and do offer as Board's Exhibit 1(a), the first amended Charge; Exhibit 1(b), the Complaint; Exhibit 1(c), the notice of hearing; Exhibit 1(d), the affidavit of service of the notice of hearing, and Complaint; and Board's Exhibit 1(e), the Answer filed by the Respondent.

(Thereupon the documents above referred to were marked Board's Exhibits Nos. 1(a), through 1(e), inclusive, for identification.)

Trial Examiner Myers: Any objections to those papers going into evidence?

Mr. Callister: No objection.

Trial Examiner Myers: There being no objections, the papers are received in evidence, and I will ask the Reporter to please mark them as Board's Exhibits 1(a) through 1(e), inclusive.

(The documents heretofore marked Board's Exhibits Nos. 1(a) through 1(e), inclusive, for identification, were received in evidence.) [6]

Mr. Royster: Mr. Examiner, prior to the opening of the hearing counsel for the parties have entered into a tentative stipulation on the commerce aspects of this case which I now offer.

It is hereby stipulated among counsel for the Re-

spondent, counsel for the Charging Union, and counsel for the Board——

Mr. Callister: (Interposing) Is the Union a part of this stipulation?

Mr. Royster: Yes.

Trial Examiner Myers: That is by Mr. Apperson, the International Representative?

Mr. Royster: Yes.

(Continuing)——that during the year ending June 30, 1945, Wells, Inc., transported a total of 194,577 tons of freight, of which 72.8 per cent was interstate. The gross revenue for hauling this freight amounted to \$657,034.

In the conduct of its business the Respondent uses approximately 50 trucks.

Trial Examiner Myers: Do you so stipulate?

Mr. Callister: I do so.

Trial Examiner Myers: Mr. Apperson?

Mr. Apperson: I so stipulate.

Trial Examiner Myers: And you, Mr. Royster?

Mr. Royster: I do.

Trial Examiner Myers: Any other stipulations? [7]

Mr. Royster: I have two exhibits which may go in by stipulation, Mr. Examiner. Payroll records furnished counsel for the Board by the Respondent prior to the hearing.

Mr. Callister: Just a minute, Mr. Royster, is this the proper time to put those in? I do not want to object to them unless I find it necessary.

Now, we have given Mr. Royster certain docu-

ments. We have no objection to them as to the fact those are our figures. The only thing that comes in my mind is that I may find some objection to the presentation of the documents for the purpose for which they may be presented.

Now, at this time, Mr. Examiner, I do not know the purpose for which Mr. Royster has to present these documents so I would have to object to them at this time. I do not care to do so. I think if they were presented at the proper time I would have no objection.

Mr. Royster: I can make a statement now in that respect.

The purpose of these payrolls is to show the employees of Wells, Inc., in the shop at Reno on certain dates, the first date being May 15, 1944; the second, October 5, 1944; and the third, December 22, 1944.

Now, it is the purpose of the Board, the expectation of counsel for the Board, to show, predicated upon these payrolls records, that the Union on those dates represented a majority of the shop employees. [8]

Mr. Callister: Now, I think there is a proper time and proper place to introduce those, and I do not think it is proper at this time because I think the foundation should be laid before they will be put in. I will not stipulate to them at this time. I will at the proper time.

Trial Examiner Myers: You cannot offer them if no foundation is laid unless you have a stipula-

tion. Mr. Callister does not want to stipulate at this time.

Mr. Callister: It is not because I want to be arbitrary, not at all.

Trial Examiner Myers: I know what you have in mind, at least I think I do.

Mr. Royster: It strikes me, Mr. Examiner, that that puts me to placing Mr. Wells on the stand and introducing these payrolls through him.

Trial Examiner Myers: Well, that is for you to figure out.

Mr. Royster: All right, sir.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Are there any motions addressed to the pleadings?

Mr. Callister: We have none at this time, Mr. Examiner. However, I would like this reservation, if I may, that if something should develop during the hearing that I am not [9] aware of now, I would like to reserve our motions to the end, if I may. I put this on this basis rather than interrupt during the course of this trial or hearing, I would like the opportunity at the end to make whatever motions that I would desire to make that should be in order at the beginning, but if I may reserve them to the last.

Trial Examiner Myers: Very well, sir.

Will you call your first witness, Mr. Royster, please?

Mr. Royster: Mr. Apperson.

K. C. APPERSON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: K. C. Apperson.

Trial Examiner Myers: Where do you live?

The Witness: 1332 Yale Avenue, Stockton, California.

Trial Examiner Myers: You may proceed, Mr. Royster.

Mr. Callister: Is there anything we can stipulate to?

Mr. Royster: Approve the labor organization.

Mr. Callister: We will so stipulate.

Mr. Royster: I will offer the stipulation then.

Mr. Callister: I wish you would tell me ahead of time and I will tell you whether I agree to it or not. [10]

Mr. Royster: Before the hearing opened I sug-

(Testimony of K. C. Apperson.)

gested this to you and you thought you were not willing to stipulate. The stipulation I had proposed, perhaps you misunderstood, was that the International Association of Machinists is a labor organization within the meaning of the National Labor Relations Act.

Mr. Callister: We will so stipulate.

Mr. Royster: We so tipulate.

Trial Examiner Myers: Do you want this witness?

Mr. Royster: No.

Trial Examiner Myers: Do you have any questions, Mr. Callister?

Mr. Callister: No, we have none.

Trial Examiner Myers: You are excused, Mr. Apperson.

(Witness excused.)

Trial Examiner Myers: Call your next witness, Mr. Royster.

Mr. Royster: Mr. Jack Benton.

JACK C. BENTON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

(Testimony of Jack C. Benton.)

The Witness: Jack C. Benton.

Trial Examiner Myers: Please spell your last name for [11] the record.

The Witness: B-e-n-t-o-n.

Trial Examiner Myers: Where do you live, Mr. Benton?

The Witness: Route 1, Box 60-H, Reno, Nevada.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

By Mr. Royster:

Q. What is your occupation?

A. Heavy-duty mechanic.

Q. By whom are you employed?

A. Nevada Truck Sales.

Q. Is that in Reno? A. Yes, sir.

Q. Were you ever employed by Wells, Inc.?

A. Yes, sir.

Q. During what periods or period?

A. August 17, 1942 to January 31, 1945.

Q. What was the last job classification that you had with Wells?

A. Shop foreman.

Q. How long were you classified as shop foreman?

A. From April 16, in '43, to January 31, in '45.

Q. What were your duties as shop foreman?

A. Duties were to keep the rigs, the trucks in

(Testimony of Jack C. Benton.)

service, repair to all necessary equipment to transports running out of Reno. [12]

Q. Did you direct the activities of other employees?

A. Yes, sir, of greasemen, tire men, helpers and mechanics.

Mr. Callister: Now, in order to save time, we will be glad to stipulate this witness, Mr. Benton, during the period he refers to, was shop foreman, had the right to hire and fire, did do so, did supervise repair work and so forth, if the Board desires to so stipulate.

Mr. Royster: I think the testimony has covered that up to this point.

Trial Examiner Myers: You want to accept the stipulation? Do you so stipulate, Mr. Royster?

Mr. Royster: I so stipulate.

Trial Examiner Myers: And you, Mr. Callister?

Mr. Callister: I so stipulate.

Trial Examiner Myers: Very well.

Q. (By Mr. Royster) Will you describe the operation of the Wells shop here in Reno, Mr. Benton?

A. You mean the mechanical work?

Q. Yes, just what is done there.

A. Well, it's complete repair work on all transports, trucks that come in from various jobs that belonged to Wells, Inc., pertaining to mechanical

(Testimony of Jack C. Benton.)

work, welding, greasing, servicing, putting them out in first class shape.

Q. Was there any limitation on the type of repairs made on trucks? [13]

A. No, we done everything.

Q. What do the greasers do in the shop?

A. Oh, one time they greased trucks, cleaned floors, washed parts, helped mechanics, and changed tires before we had a tire man.

Trial Examiner Myers: You mean from time to time they do these various jobs?

The Witness: Well, whenever they weren't putting a truck into service they washed parts, helped the mechanic get tires ready for the transports.

Q. (By Mr. Royster) Do you know Ralph Mudge? A. Yes.

Trial Examiner Myers: How do you spell that?

Mr. Royster: M-u-d-g-e.

Q. (By Mr. Royster) What was his job classification at Wells, Inc.? A. The last?

Q. Well, no, the first job classification?

A. Grease man. I hired him for night greaser.

Q. Did his classification change?

A. Yes, sir.

Q. To what did it change?

A. Well, I think he was worked up to what we call the handyman.

Mr. Callister: At this time, Mr. Examiner, I

(Testimony of Jack C. Benton.)

feel that [14] this line of examination is immaterial, incompetent and irrelevant, and I do not yet know—no doubt it is preliminary—I do not know what it is preliminary to, but I would like to reserve a motion at this time, unless it is tied up with something material, I would like to move to strike it.

Trial Examiner Myers: Very well, if he doesn't connect it up, you may move to strike.

Will you fix some time when the man was hired and when his job changed?

Mr. Royster: Nothing turns on that period, Mr. Examiner, but I shall do so. The purpose of this examination is merely to describe the operation of the shop, what the employees did to arrive at the final conclusion of what constitutes an appropriate bargaining unit.

Trial Examiner Myers: Do you dispute the appropriateness of the unit?

Mr. Callister: Mr. Examiner, we have never yet been able to find out what they claim the unit to be. Now, if the Board or Union, International Association of Machinists, would tell us what they claim the unit to be, we are in a position to say whether we will accept it or not. It is not our purpose to quibble over the unit if we can find out what it is.

Now, I think the Board or the Union should tell us what the appropriate unit here is for the purpose of collective [15] bargaining.

Trial Examiner Myers: Well, do you want to

(Testimony of Jack C. Benton.)

discuss that off the record, Mr. Royster, or on the record?

Mr. Royster: I think on the record. The unit is set forth in the Complaint and is denied by the Respondent's Answer.

Mr. Callister: Now, Mr. Examiner, it is not described in the Complaint fully for the reason that it says nothing about foremen. It is the first time I have ever seen a unit described as that set forth in the Complaint.

Trial Examiner Myers: Are you objecting to the classification, or to the persons who are supposed to constitute the unit?

Mr. Callister: Not as individuals, but the job classifications are not replete.

Now, I notice here, paragraph 4 in the Complaint, it says nothing about the exclusion of supervisors or foremen, and so forth. Although that may not sound material, it is to us because many times we have a leadman, shop superintendent, shop foreman, and some are under and some are not under the appropriate unit. This is the first time, frankly, that we have ever had the unit described as much as it has been here.

I think this, Mr. Examiner: If the Board or the Union would tell us what they claim the unit to be in terms which I think we are entitled to know, then we will be in a position [16] to tell this Board whether we agree or disagree with it. I think we are entitled to that.

(Testimony of Jack C. Benton.)

Trial Examiner Myers: Very well, we will go off the record while you draw up your proposed stipulation.

(Discussion off the record.)

Trial Examiner Myers: On the record.

At the request of counsel, we will take a short recess. You may step down.

(Short recess.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Royster: Ready for the Board.

Trial Examiner Myers: Will you take the stand, please, Mr. Benton?

Mr. Royster: During an off-the-record conference, Mr. Examiner, counsel have arrived at a tentative stipulation with respect to the unit, which I will now state.

It is hereby stipulated among counsel for the Respondent, Representative of the Union, and counsel for the Board, that all mechanics, mechanic helpers, and mechanic apprentices employed by the Respondent at its Reno shop, excluding grease men and all supervisory employees with authority to hire, promote, discharge, discipline, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining.

Trial Examiner Myers: You mean during all the time that [17] is material herein?

(Testimony of Jack C. Benton.)

Mr. Royster: During all the time that is material herein.

Trial Examiner Myers: Constituted and now constitutes——

Mr. Royster: A unit appropriate for the purposes of collective bargaining.

Trial Examiner Myers: Is that stipulation acceptable to you, Mr. Callister?

Mr. Callister: Yes, with this reservation, Mr. Examiner: That we feel that to stipulate to a unit appropriate for the purpose of collective bargaining at this time under this Complaint changes the matter into a representation hearing rather than failure to bargain, because we take the position that you cannot bargain until such time as the unit is agreed upon. Now, we are now agreeing what the unit for purposes of collective bargaining is, and we stipulate, in other words we think that is an appropriate unit and will so stipulate. But in so stipulating, say that we do so with the statement that we have not at any time recognized the Union as the agent for this unit because we have not yet had an opportunity to. Now, since we have determined what the unit is and we feel that any further proceedings under this Complaint now in view of this stipulation would be immaterial, incompetent and irrelevant, and this actually now sets down to a representation hearing if we are served with the proper representation [18] petition.

Trial Examiner Myers: We are only taking up now the unit question.

(Testimony of Jack C. Benton.)

Mr. Callister: I appreciate that, but I wanted our position known for the record.

Trial Examiner Myers: Do you stipulate, do you accept the stipulation offered by Mr. Royster?

Mr. Callister: That is correct, with the reservation, with the statement I have made.

Trial Examiner Myers: Do you stipulate, Mr. Apperson?

Mr. Apperson: The Machinists so stipulate.

Trial Examiner Myers: And you, Mr. Royster?

Mr. Royster: I stipulate for the Board.

Trial Examiner Myers: Very well.

Q. (By Mr. Royster) Do you know Ray Reisbeck? A. Yes, sir.

Trial Examiner Myers: Will you spell the last name, please?

Mr. Royster: R-e-i-s-b-e-c-k.

Q. (By Mr. Royster) What was his position in December, 1944? A. Tireman.

Q. By whom was he employed?

A. Wells, Inc.

Mr. Callister: Just a moment, we object to this and move [19] to strike on the grounds that it is immaterial, incompetent and irrelevant. Tire men have nothing whatever to do here.

Trial Examiner Myers: Is this part of the unit, an 8(5) aspect of the case?

Mr. Royster: Part of the 8(5) aspect of the case, but I planned to introduce records later showing the employees on the payroll as of certain dates.

(Testimony of Jack C. Benton.)

Now, that record will not show that Reisbeck is a tireman.

Mr. Callister: What makes the difference whether he is or not?

Trial Examiner Myers: You want to exclude him from the unit, Mr. Royster?

Mr. Royster: He will be excluded under that stipulation.

Trial Examiner Myers: You are going to take a list of people whose names appear on the list supplied by Mr. Callister and exclude certain people that you think should be excluded?

Mr. Royster: He is the only one in that particular category because the payroll does not show he is a tireman. It shows him listed as a foreman, but a foreman would not automatically be excluded from the unit described by our stipulation, unless there was a showing actually he exercised supervisory authority.

Mr. Callister: Why don't we do this: Now, all we are concerned with is the names of those individuals, mechanics and mechanic helpers. [20]

Mr. Royster: All right, that is very well, but in the case of this Reisbeck, the payroll would not show what he is. I am showing what he is.

Trial Examiner Myers: What do you claim he is?

Mr. Callister: Tire foreman.

Trial Examiner Myers: Therefore he should be excluded from the unit?

And you, Mr. Royster?

(Testimony of Jack C. Benton.)

Mr. Royster: I agree.

Trial Examiner Myers: And you, Mr. Apperson?

Mr. Apperson: Yes.

Mr. Callister: I do not see any materiality in it.

Mr. Royster: It is material in proving the composition of the unit.

Trial Examiner Myers: Do not get into any discussion. Mr. Reisbeck is not to be included in the unit?

Mr. Royster: That is agreed.

Trial Examiner Myers: What is his first name?

Mr. Royster: Ray.

Q. (By Mr. Royster) Do you know E. S. Casinella? A. Yes.

Trial Examiner Myers: How do you spell it?

Mr. Royster: C-a-s-i-n-e-l-l-a.

Trial Examiner Myers: Regarding that man, what is your position as to him, Mr. Royster? [21]

Mr. Royster: The position of the Board is that Casinella at all times material under this complaint was a non-supervisory mechanical employee of Wells, Inc., at Reno.

Trial Examiner Myers: You say he should be included?

Mr. Royster: Should be included in the unit.

Trial Examiner Myers: Mr. Callister?

Mr. Callister: I understand he is a blacksmith.

Trial Examiner Myers: And you say he should be excluded?

Mr. Callister: That is right.

(Testimony of Jack C. Benton.)

Trial Examiner Myers: What is your position, Mr. Apperson?

Mr. Apperson: Same as the Board's.

Trial Examiner Myers: Go ahead, then, with your examination.

Q. (By Mr. Royster) Was Mr. Casinella employed by Wells, Inc., at Reno? A. Yes.

Q. Do you know what his work was, what the nature of his duties was, say in May, 1944?

A. May '44?

Trial Examiner Myers: You mean throughout the month of May, '44?

Q. (By Mr. Royster) Throughout the month of May, 1944?

A. Building bodies, welding. He also done mechanical work, rebuilding of truck frames, installing under-carriage, and [22] that.

Q. Now, during the month of October, 1944, do you know what work he was doing?

Trial Examiner Myers: Throughout the month of October?

Q. (By Mr. Royster) Throughout the month of October, 1944. A. October of '44?

Q. Yes, sir.

A. Well, in the same capacity as far as I know, yes, sir.

Q. What opportunity had you to know what he was doing during that month?

A. Well, I was back and forth to the body shop. We worked together. He would want something made or taken out and we generally had the pick-

(Testimony of Jack C. Benton.)

ups over there. He would call up and want a part or want me to come over for suggestions or something like that, and I was back and forth over there.

Q. Throughout the month of December, 1944, can you tell us what work was performed by Mr. Casinella?

A. I would say about the same, maybe a little more mechanical work.

Q. During that month where did he work in relation to the place that you worked?

A. Well, they were working over on Lake and——

Trial Examiner Myers: Who is "they"?

The Witness: Well, the shop, the body shop is at Lake, I forget the name of the other street. It was on Lake street anyway, on the corner of Lake and Plaza I think. [23]

Q. (By Mr. Royster) Will you tell us very briefly what work was done in the body shop?

A. Well, they built bodies, they built stake bodies, built ore bodies for Elko, and they also pulled motors and front ends, and differentials, and assembled quite a bit of trucks there in December, along the latter part of '44.

Q. Are you familiar with the tools necessary to the performance of work in the body shop?

A. Well, yes, pertains to mechanical tools, acetylene welding, and arc welding, and blacksmith's tools.

Q. Do you know under whose direction Mr. Casinella worked?

(Testimony of Jack C. Benton.)

A. At one time he was under mine, and I told Richer it was too much for me to be at the body shop and the garage, and our repair service where Wells is located at present, and the service shop, and that I didn't want to have anything to do with it.

Q. You mentioned Mr. Richer. Who is he?

A. Superintendent of maintenance before Mr. Divine came in. And then when Richer told me, he said, "You won't have anything to do with the shop over there."

Trial Examiner Myers: When did he tell you this?

The Witness: It was approximately two months after Casinella went to work there.

Trial Examiner Myers: Well, when would you say that was? [24]

The Witness: Well, I really don't know the date.

Trial Examiner Myers: What year was it?

The Witness: That was in '43 I think.

Q. (By Mr. Royster) Do you know whether or not Mr. Casinella worked with tools?

A. Yes, sir, he worked with tools.

Q. Do you have means of knowing or can you testify as to the approximate amount of his time he spent working with tools?

A. Well, about, I guess 75 per cent.

Q. How was the the other 25 per cent of his time divided?

A. Well, supervising and welding.

Q. Did he have men under his supervision?

(Testimony of Jack C. Benton.)

A. Yes, sir.

Q. Do you know about how many?

A. Two to three.

Q. Now, is that true in the month of May, 1944, throughout the entire month? A. Yes.

Q. The month of October, 1944?

A. Yes.

Q. And the month of December, 1944?

A. Yes.

Q. Do you know the extent of Mr. Casinella's authority over these two or three men?

A. No, I really couldn't swear to that. He hired some men [25] and some men were taken from my shop and put in there.

Q. By whom were they taken from your shop?

A. Well, they were put over to work on some trucks that we had in the body shop.

Trial Examiner Myers: Do you dispute the supervisory status of Casinella?

Mr. Callister: No, we will stipulate that Mr. Casinella was a foreman with the right to hire and fire, and did fire as Mr. Benton so testified.

Mr. Royster: Mr. Myers, I am really not sure about the status of Casinella. I am just trying to develop for the record what actually he did, and I do not know whether the Board will find him to be supervisory or not.

Q. (By Mr. Royster) Now I believe you just testified that certain employees from the shop under your direction were transferred over on occasion to work in the body shop under Mr. Casinella.

(Testimony of Jack C. Benton.)

A. I put them over. They worked under my supervision on trucks we are dismantling and then assembling, and then Richer, Mr. Richer, the superintendent, advised me and we talked it over that we would leave those boys in the shop and one was left there permanently, and taken under Mr. Casinella's supervision, I suppose you would call it, which is Mr. Palmer.

Q. When you say leave them in the shop, you mean leave this [26] particular individual in the body shop?

A. In the body shop, yes, sir.

Q. What was the classification of the employees who were transferred from the shop where you worked to the body shop?

A. Mechanics.

Q. Mechanics?

A. Yes, sir.

Q. Do you know C. H. Haverland?

A. Yes, sir.

Q. Do you know what work he was doing—strike that. Was he ever employed by Wells, Inc.?

A. Yes, sir.

Trial Examiner Myers: Before we go any further on that, what is your position regarding that gentleman?

Mr. Royster: That he should be in the unit, that he is a mechanic working in the shop at Reno and is within the appropriate bargaining unit.

Mr. Callister: I don't know, may I make this statement: I think if Mr. Royster will tell us whom he thinks should be in the unit we will agree. I do

(Testimony of Jack C. Benton.)

not think it is necessary to go through this examination.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record. [27]

Mr. Callister: We will stipulate, Mr. Examiner, that the following individuals who appear on the payroll of Wells, Inc., Respondent herein, on the 15th day of December, 1944, were in the following job classifications:

A. B. Gandrud was what may be termed a lead-man, or he had some supervisory powers but did not have the right to hire or fire or recommend hiring or firing.

Trial Examiner Myers: What is your position as to whether he should be——

Mr. Callister: (Interposing) We will stipulate he is in the unit and we will do the same with Hollenback, Haverland, Ellis, Mudge, Staats, Tower, McFadden.

In respect to——

Trial Examiner Myers: Just a minute, we will take that stipulation up first.

You stipulate they should be included in the unit?

Mr. Callister: That is right, they are mechanics, mechanic helpers.

Trial Examiner Myers: During all the time material herein they were?

Mr. Callister: Either mechanics or mechanic helpers.

(Testimony of Jack C. Benton.)

Trial Examiner Myers: And they should be included in the unit?

Mr. Callister: That is right.

Trial Examiner Myers: Do you so stipulate, Mr. Royster? [28]

Mr. Royster: It is satisfactory to the Board, Mr. Examiner, I would so stipulate.

Trial Examiner Myers: Mr. Apperson?

Mr. Apperson: The Machinists so stipulate.

Trial Examiner Myers: Very well.

Now, can you agree on the names that Mr. Callister is going to read out now?

Mr. Callister: Now, in respect to Wilson and McBride, our records show and our information is that they are blacksmith helpers, they build bodies, and that type of work, do not do mechanical work where that word is defined to mean fixing differentials or crank cases, they do not use tools to fix the mechanical end of a truck. They are body builders. The records will so show.

Trial Examiner Myers: They should be excluded?

Mr. Callister: We have no objection to including them, but we are stating the facts. We have determined what the unit is, and now we are telling you the factual situation of these men. If the Board wants to put them in, fine. If not, it makes no difference what.

As I understand the only other individual there is a question on is Casinella, the one testified to, that has a right to hire and fire.

(Testimony of Jack C. Benton.)

Trial Examiner Myers: The record shows what his job is. [29]

Mr. Callister: We, so the record will be clear, take the position that he should not be included because he is a foreman.

Q. (By Mr. Royster) Mr. Benton, do you know a C. H. McBride? A. Yes, sir.

Q. Do you know whether or not he was employed by Wells, Inc.? A. He was.

Q. Do you know what work he did?

Trial Examiner Myers: When, Mr. Royster?

Q. (By Mr. Royster) Do you know what work he did during the month of October, 1944?

Trial Examiner Myers: Throughout the month?

A. Yes, sir, I would say McBride is the only one working for Casinella entitled to be classed as a body builder, that he carried a blacksmith's card and also ornamental iron workers' card. I don't think he had very many tools. He was the only one working for Casinella that could be classed as full blacksmith helper.

Q. (By Mr. Royster) Just what work did he do?

A. He assisted in laying out, mostly putting in the floors and helping Wilson and Casinella assemble, install, assemble parts.

Trial Examiner Myers: Assembly parts of what?

The Witness: Assemble parts such as differentials, front axle, motors, ground lines, transmissions pertaining [30] to a truck.

(Testimony of Jack C. Benton.)

Q. (By Mr. Royster) Do you know whether his work changed in any respect throughout the entire month of December, 1944?

A. No, I don't think so.

Q. Is it your testimony that it was the same or was not the same? A. The same.

Q. It was the same? A. Yes.

Q. Do you know R. H. Wilson?

A. Yes, sir.

Q. Do you know what work he did for Wells, Inc.?

A. He came to work for Wells, Inc., in—he hired out in my shop as going to learn the mechanical trade so that he could be transferred later to some different project of Wells, Inc., so that he could take over a shop or else be a supervisor.

Q. Do you recall about when it was that he was hired? A. No, I don't.

Trial Examiner Myers: Do you know what year?

The Witness: '44 I think.

Trial Examiner Myers: Do you know what part of 1944?

The Witness: Well, I think it was in the summer of '44, yes, sir. [31]

Q. (By Mr. Royster) Your recollection on that is approximate, is it? A. Yes.

Q. Do you know what work R. H. Wilson or H. Wilson—

Trial Examiner Myers: Is it one and the same person?

(Testimony of Jack C. Benton.)

Mr. Callister: Yes, we will so stipulate that R. H. Wilson is the same as H.

Trial Examiner Myers: What is his first name?

The Witness: His first name is Robert, but they call him Harold, by his middle name.

Q. (By Mr. Royster) Do you know what work Robert Wilson or Harold Wilson did during, throughout the entire month of October, 1944?

A. I would say that he performed about 75 or 80 per cent of mechanical work, and the rest body work.

Q. Where did he perform this work?

A. Oh, their body shop on Lake Street.

Trial Examiner Myers: Did he always work at the body shop on Lake Street?

The Witness: No, sir, he was transferred over to the body shop to learn welding so he had Casinella, he could teach him welding and also he wanted to learn the welding and acetylene and arc and then the mechanical game too, together.

Trial Examiner Myers: When was he transferred? [32]

The Witness: Not long after he went to work for me in the shop at Wells cargo service shop.

Trial Examiner Myers: Would you say he worked for you about a month?

The Witness: About a month, yes, sir.

Trial Examiner Myers: What did he do for you during that time.

The Witness: Well, he was classed——

Trial Examiner Myers: What did he do?

(Testimony of Jack C. Benton.)

The Witness: He was a helper.

Trial Examiner Myers: Helper on what?

The Witness: Mechanic on trucks drawing journeyman's wages.

Trial Examiner Myers: What kind of helper work did he do, did he work on the motor?

The Witness: Helped install motors, transmissions, take up brakes or remove broken parts from the trucks.

Trial Examiner Myers: Go ahead.

Mr. Royster: That is all.

Trial Examiner Myers: Any questions, Mr. Callister?

Mr. Callister: Yes, I have.

Trial Examiner Myers: Will you kindly proceed?

Cross Examination

Q. (By Mr. Callister) Mr. Benton, as I understand it, during the months of October and through the month of [33] December, prior to your leaving the employ of Wells, you were their shop foreman in charge of all the mechanical work?

A. Yes, sir.

Q. As I understood, we stipulated you did hire and fire?

A. Yes, every man that was in the shop.

Q. You hired and fired?

A. Nobody hired him unless it was on approval.

Q. But you did it? A. Yes, sir.

Q. If they were going to be hired by anyone else, they had to be approved by you?

(Testimony of Jack C. Benton.)

A. Well, Bob there.

Trial Examiner Myers: Bob who?

The Witness: Bob Wells, Howard Wells, we generally if a man came in we talked it over.

Q. (By Mr. Callister) But the fact it was up to you primarily who you should have?

A. The responsibility was left to me.

Q. And the hiring and firing, of course?

A. Yes, sir.

Q. Your answer is "Yes"? A. Yes, sir.

Q. In respect to McBride, he was over on the Lake Street shop, which is a body-building division, is that correct? [34] A. Yes, sir.

Q. All he did was build bodies with Mr. Casinella?

A. Oh, no, he assisted in the helping work, assembling parts that were overhauled, as I stated.

Trial Examiner Myers: Parts of what?

The Witness: Parts overhauled.

Trial Examiner Myers: Of a motor?

The Witness: Trucks in general, front axles, transmissions, differentials.

Q. (By Mr. Callister) He did not use tools, as I understand it? A. Yes, he used tools.

Q. He did not have tools like the regular mechanics? A. Not a complete set.

Q. In other words, he did that work ordinarily referred to as blacksmith's helper or body building?

A. I guess body builder.

Q. That is right, he is a body builder?

(Testimony of Jack C. Benton.)

A. Well, he is a 50-50 man because they done all kinds of work there.

Q. Now, during the month of December you were moving the shop, were you not?

A. Yes, they were trying to get——

Q. (Interposing) No one at that time was doing much mechanical work, if any. [35]

A. Yes, sir, we had one truck in there completely dismantled.

Q. Only a few are working on that?

A. Casinella, McBride and Wilson were trying to get the truck.

Q. During the month of December?

Trial Examiner Myers: 1944?

Q. (By Mr. Callister) Yes, the shop was being moved, and as a result very few of the trucks, if any, were being repaired?

A. No, the shop was just as full with trucks as it ever was.

Q. Maybe it was full of trucks, but were they repairing?

A. Repairing and moving just the same.

Q. Not in the body shop, were they?

A. Yes, they had a party moving.

Mr. Callister: That is all.

Trial Examiner Myers: Any questions?

Mr. Apperson: No questions.

Trial Examiner Myers: Any redirect?

Mr. Royster: No redirect.

(Testimony of Jack C. Benton.)

Trial Examiner Myers: You are excused, Mr. Benton.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, Mr. Royster? [36]

Mr. Royster: Mr. McKay.

GEORGE E. McKAY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: George E. McKay.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: Mc-K-a-y.

Trial Examiner Myers: And what is your address?

The Witness: 1115 Sierra Street.

Trial Examiner Myers: Reno?

The Witness: Reno, Nevada.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Q. (By Mr. Royster) What is your occupation, Mr. McKay? A. I am a garage owner.

Q. Where do you operate your garage?

A. 423 North Virginia, Reno.

(Testimony of George E. McKay.)

Q. Reno? A. Reno, Nevada.

Q. Are you a member of the International Association of Machinists? [37] A. I am.

Q. Do you hold office in that Union?

A. I do.

Q. What office do you hold?

A. I am Financial Secretary and Business Representative for the Machinists Local in Reno, Nevada.

Q. What are the duties of that office?

A. The duties are to collect all members you possibly can, initiate them in and collect dues, see that the men do not fall back and drop out, and if any of the members have any misunderstanding, why we straighten that out. It's to see that the Local is kept going and in order.

Trial Examiner Myers: What is the number of the Local?

The Witness: 801.

Q. (By Mr. Royster) Well, in connection with the performance of the duties of your office in the Union, do you solicit workers to join the Union?

A. I do.

Q. Have you solicited employees of Wells, Inc.?

A. I have.

Q. Have any of them given you authorization to represent them in matters of collective bargaining? A. They have.

Q. Have you brought any of those designations with you? A. I have. [38]

Q. May I see them, please?

(Testimony of George E. McKay.)

A. Yes.

Mr. Royster: Will the Trial Examiner indulge me for a moment while I line these up.

Trial Examiner Myers: Very well, sir.

Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Mr. Royster: Will the Reporter please mark these for identification Board's No. 2(a), (b), (c), and so forth?

(Thereupon the documents above referred to were marked Board's Exhibits Nos. 2(a) through 2(k), inclusive, for identification.)

Q. (By Mr. Royster) Mr. McKay, I show you Board's Exhibit 2(a) for identification, and ask if you can tell us what it is?

Mr. Callister: We object on the ground that the exhibit speaks for itself.

Mr. Royster: This is preliminary. I want him to identify it.

Trial Examiner Myers: Just don't tell us these are slips of paper or something like that. Describe it in detail.

The Witness: This is an authorization.

Trial Examiner Myers: The objection was overruled. [39]

The Witness: An authorization signed and witnessed and the employer is Wells, Inc.

Q. (By Mr. Royster) Whose signature does it purport to bear?

(Testimony of George E. McKay.)

A. The signature is E. F. Staats.

Q. Is that signature witnessed?

A. That signature is witnessed.

Q. By whom?

A. By Melvin Jakomiet.

Q. How did it come into your possession?

A. I failed to get all the men at Wells, Inc. when I was getting the authorizations signed and that at our regular meeting of the International Association of Machinist in Reno, Nevada, Melvin Jackomiet is a member in good standing, and I asked him to take a few slips and sign the men that I had not got yet and sign them, have them sign if they would and him witness by his name and turn them over to me which he has done.

Q. Can you tell us approximately when that authorization slip was given to your possession?

A. That was given to me the day after it was signed.

Q. What day then did you receive it?

A. I received it on the 10th, 5th and '44.

Trial Examiner Myers: The 5th day of October, 1944?

The Witness: That is right. [40]

Q. (By Mr. Royster) Now, as Business Agent and Financial Secretary of Local 801, International Association of Machinists, do you know whether or not E. F. Staats, whose purported signature is on that exhibit, is a member of the Local?

Mr. Callister: Just a moment, we object to it on the ground that it is not the best evidence.

(Testimony of George E. McKay.)

Trial Examiner Myer: I will sustain the objection.

Q. (By Mr. Royster) Since October 5, 1944, have you in the performance of your office as Business Representative of the Local 801 collected dues from E. F. Staats?

Mr. Callister: We object that that is not the best evidence. Let the record show that.

Trial Examiner Myers: Overruled. Just answer "Yes" or "No".

A. Yes.

Q. (By Mr. Royster) I show you Board's Exhibit 2(b) for identification, and ask if you can identify it? A. I do.

Q. Will you tell us what it is?

A. It is an authorization signed by Ralph Mudge, witnessed by Melvin Jakomiet.

Mr. Callister: Just a moment. I move to strike the statement that it is signed by Ralph Mudge, unless it is shown that he actually was present or knows his signature. [41] I think we ought to have it proper here.

Trial Examiner Myers: I think Mr. Callister is right. Strike out the answer.

Q. (By Mr. Royster) Whose signature does it purport to bear?

Mr. Callister: The instrument itself sets forth Ralph Mudge and it speaks for itself.

Trial Examiner Myers: Whose name is on there?

The Witness: Ralph Mudge.

(Testimony of George E. McKay.)

Q. (By Mr. Royster) How did it come to your possession?

A. This one was signed the same as the first one, witnessed by Melvin Jakomiet, which I had asked him to get signed and return to me.

Q. When did that document come to your possession?

A. This come to me October 5, 1944.

Q. From whom did you get it?

A. From Melvin Jakomiet.

Q. Where is Melvin Jakomiet?

A. Melvin Jakomiet is in the Army now.

Q. As Financial Secretary and Business Agent of Local 801 have you collected dues from Ralph Mudge since October 5, 1944?

A. I have.

Q. I show you Board's Exhibit 2(c) for identification, and ask if you can identify it?

A. I do. [42]

Q. What is it?

A. It is an authorization signed by——

Mr. Callister: (Interposing) Just a minute, let me see it first.

(The document was handed to Mr. Callister.)

A. Authorization signed by Freemond L. Reed of the Wells, Inc., witnessed by George E. McKay, that is myself.

Q. (By Mr. Royster) When was it signed?

A. September 30, 1944.

Mr. Callister: Just a moment, I move to strike on the ground that our stipulation shows that he

(Testimony of George E. McKay.)

was not an employee at that time nor a man to come within this unit.

Mr. Royster: Which one is this?

Mr. Callister: Reed.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Do you withdraw your motion, Mr. Callister?

Mr. Callister: Yes, I do.

Q. (By Mr. Royster) Now, Mr. McKay, I show you Board's Exhibits 2(d) through 2(k).

Mr. Callister: Mr. Royster, so the record will be clear, let the record show this Mr. Reed was on the payroll of September 30, 1944, but was not on the payroll as of the 15th day of December, 1944. [43]

Mr. Royster: That is correct.

Q. (By Mr. Royster) And I ask you if you can identify them.

Trial Examiner Myers: Taking one at a time, Mr. McKay, read off the exhibit number.

A. This is an authorization signed by R. O. Garoutte, and witnessed by George E. McKay on August 10th, 1944.

Trial Examiner Myers: Signed August 10, 1944?

The Witness: That is right.

Trial Examiner Myers: What exhibit number is that, Mr. Royster?

Mr. Royster: Exhibit No. 2(d), Mr. Examiner.

The Witness: This is an authorization signed by George W. Palmer, employee of Wells, Inc. on 6/3/44, witnessed by George E. McKay.

(Testimony of George E. McKay.)

Trial Examiner Myers: June 30, 1944?

The Witness: No, June 3rd.

Mr. Callister: Just a moment. I think we ought to with each one of these authorization, state whether he was on the payroll so the payroll will show.

Trial Examiner Myers: Why don't you offer the payroll in evidence now and then we will have it. Is that agreeable to you, Mr. Callister?

Mr. Callister: Yes.

Mr. Royster: I offer at this time, Mr. Examiner, as Board's Exhibit 3, the payroll for the shop employees of the [44] Respondent at Reno, Nevada, for the period ending May 15, 1944, and the period ending September 30, 1944, and with the notation which appears on this document that there were no changes in the personnel of the shop on May 16, 1944, and no changes in the personnel of the shop during the period from October 1 to October 5, 1944.

(Thereupon the document above referred to was marked Board's Exhibit No. 3 for identification.)

Trial Examiner Myers: Is there any objection to the paper going into evidence?

Mr. Callister: Except this: I want to ask Mr. Royster one question.

What is your materiality and what you contend for the payroll as of May 15, 1944?

Mr. Royster: The complaint alleges a refusal to bargain on the 15th of May, 1944; also on the 5th of October, and 22nd of December.

(Testimony of George E. McKay.)

Trial Examiner Myers: And this Exhibit No. 3 for identification shows the payroll of May 16, 1944, is that right?

Mr. Royster: That is correct, sir.

Trial Examiner Myers: Any objection to the paper going in evidence?

Mr. Callister: No.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to [45] please mark it Board's Exhibit No. 3.

(The document heretofore marked Board's Exhibit No. 3 for identification was received in evidence.)

Mr. Royster: Will the Reporter please mark this as Board's Exhibit No. 4 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 4 for identification.)

Mr. Royster: Mr. Examiner, I offer Board's Exhibit 4, a payroll list of the employees of the Respondent as of December 15, 1944. Now, on this document appears also a payroll list for Luning and for Elko, which play no part in this proceeding. The names listed on this payroll to whom this proceeding pertains have been entered into the record by stipulation as to the composition of the unit.

Trial Examiner Myers: The persons whose names appear on that list were in the Respondent's

(Testimony of George E. McKay.)

employ, that is, Reno division of the Respondent on December 22, 1944?

Mr. Royster: On December 15, 1944, Mr. Examiner.

Mr. Callister has told me that he will be able to tell us this afternoon which, if any, of these employees were terminated between the 15th of December and the 22nd, and what employees who might fall within the appropriate bargaining unit were hired between those two dates.

Mr. Callister: As I understand it, what you want is the employees if any changes were made since the 15th day of [46] December, 1944, to the 22nd day of December.

Mr. Royster: That is right, either by hiring or firing.

Mr. Callister: We will have it for you.

Trial Examiner Myers: Is there any objection to this paper going in evidence?

Mr. Callister: We have no objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit No. 4.

(The document heretofore marked Board's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Myers: Were these Exhibits 3 and 4 prepared by the Respondent?

Mr. Callister: Yes.

(Testimony of George E. McKay.)

Trial Examiner Myers: Very well.

Q. (By Mr. Royster) Now, Mr. McKay, I forgot the exact status of your testimony. You were testifying concerning Board's Exhibit 2(e), I believe.

Trial Examiner Myers: Is that the one signed June 3, 1944?

The Witness: That is right.

Trial Examiner Myers: What is the next one, 2(f)?

Mr. Royster: 2(f).

The Witness: I have another one here, authorization signed by R. H. Wilson, an employee of Wells, Inc. on June [47] 3, 1944, and witnessed by George E. McKay.

Trial Examiner Myers: That is, it was signed on that date?

The Witness: That is right.

Trial Examiner Myers: Handed to you on that date?

The Witness: I was there when it was signed.

Trial Examiner Myers: That is true as to the other exhibits you just testified to?

The Witness: That is right, yes.

Trial Examiner Myers: They were signed in your presence?

The Witness: That is right.

Trial Examiner Myers: On the dates they bear?

The Witness: That is right.

Q. (By Mr. Royster) Is that true as to all the

(Testimony of George E. McKay.)

exhibits marked for identification which bear your signature as a witness?

A. That is right.

Q. Now, as to Board's Exhibit 2(g)?

A. That is an authorization signed by E. S. Casinella on June 3, 1944, witnessed on the same day by George E. McKay.

Q. You saw him sign that authorization?

A. I did.

Q. As to Board's Exhibit 2(h)?

A. This is an authorization signed by Rudy Zayas.

Q. How do you spell that? [48]

A. Zayas, an employee of Wells, Inc., signed on June 3, 1944, and witnessed by George E. McKay.

Q. You saw him append his signature to that document on June 3, 1944? A. I did.

Q. Board's Exhibit 2(i)?

A. An authorization signed by Melvin Jakomiet, signed on June 3, 1944, and witnessed by George E. McKay.

Q. You saw Mr. Jakomiet put his signature on this document on June 3, 1944? A. I did.

Q. Board's Exhibit 2(j)?

A. It is an authorization signed by Oran Ellis, signed on June 3, 1944, and witnessed by George E. McKay.

Q. Again, you saw Mr. Ellis sign this document?

A. I did.

Q. Board's Exhibit 2(k)?

A. This is an authorization signed by Charles

(Testimony of George E. McKay.)

Haverland, employee of Wells, Inc. on June 3, 1944, and witnessed by George E. McKay.

Q. You saw Mr. Haverland put his signature on that document? A. I did.

Mr. Royster: Mr. Examiner, I offer Board's Exhibit 2(a) through 2(k) for identification in evidence.

Trial Examiner Myers: Any objection? [49]

Mr. Callister: Yes, there is, Mr. Examiner. We object first on the ground it is immaterial, incompetent and irrelevant and no materiality is shown or tied up as to the date upon which they are to become effective. For illustration, we find we have authorizations here from June through October of 1944. I notice one here on June 3.

Now, it is our position until such time as the Board states when these were to become effective when they had the majority of the employees for purposes of collective bargaining, they have no force and effect, and for the purposes of this hearing are immaterial, incompetent and irrelevant.

Now, if the Examiner please, in the pleadings here the Board states this, in Paragraph 5:

"On May 16, 1944, the Union was, and at all times since that date has been the duly designated representative——"

Now, I think that the Board is bound to show that on May 16, 1944, that they were as represented and claimed in Paragraph 5. Now, what is taking place subsequent has no force or effect and is immaterial here.

(Testimony of George E. McKay.)

Now, I do not think that the Board can bring in evidence here showing over a period for illustration of three years that people have signed authorizations subsequent to the time they claimed they represented the majority of the employees.

Trial Examiner Myers: I will overrule the objection, [50] and receive the papers in evidence, and ask the Reporter please mark them as Board's Exhibits 2(a) through and including 2(k).

(The documents heretofore marked Board's Exhibits Nos. 2(a) through 2(k), inclusive, for identification were received in evidence.)

Q. (By Mr. Royster) Mr. McKay, do you know C. H. McBride? A. I do.

Q. Can you tell us whether or not the Union claims jurisdiction over the work performed by Mr. McBride? A. We do.

Q. Do you know R. H. Wilson?

A. I do.

Q. Can you tell us whether or not the Union claims jurisdiction over the work performed by R. H. Wilson? A. We do.

Q. Did you meet Howard Wells and Bob Wells in September 1944?

Mr. Callister: Pardon me, may I at this time ask a question so we have the record clear with this past situation?

Mr. Royster; is it the position of the Board that on three distinct separate times that the Union represented the majority of the employees in the unit?

Mr. Royster: That is correct.

(Testimony of George E. McKay.)

Mr. Callister: You claim May 16, 1944, they represented a majority? [51]

Mr. Royster: Yes.

Mr. Callister: That on October 5 the Union represented a majority?

Mr. Royster: That is correct.

Mr. Callister: And on December 22nd?

Mr. Royster: Yes, sir.

Mr. Callister: Just so we have it clear, Mr. Examiner.

Mr. Royster: Actually, of course, the position of the Board is that the Union represented a majority at all times pertinent hereto since May 16, 1944, which would necessarily include the dates you mentioned.

Mr. Callister: That is what I want to get.

That being the situation, Mr. Examiner, if they represented them on May 16th then these particular designations have no force and effect as to the Board's contention. That is my point. In other words, the Board cannot come here in this hearing and say that the Union represented them in May 16, 1944, and in order to substantiate that position bring an authorization many days or months later.

Trial Examiner Myers: I see your point.

Mr. Royster: Will you give Mr. McKay my last question.

(Question read by Reporter.)

A. I did.

Mr. Callister: When was this please?

(Testimony of George E. McKay.)

The Witness: September, 1944. [52]

Trial Examiner Myers: Could we have for the record who Howard Wells is, what office he holds?

Mr. Callister: Mr. Howard Wells is Vice-President of Wells, Inc., Respondent herein, with offices at Reno.

Trial Examiner Myers: Who is the other gentleman you mentioned?

Mr. Callister: Bob Wells, Mr. Robert Wells is the Manager of Wells, Inc., Respondent at Reno.

Mr. Royster: At this point, could we have a statement as to the position of J. W. Wells?

Mr. Callister: Yes, he is President of the Wells, Inc.

Q. (By Mr. Royster) Where did this September meeting take place, Mr. McKay?

A. It took place at Wells, Inc. office on Evans Avenue.

Q. In what city? A. Reno, Nevada.

Q. Who was present at the meeting?

A. There was Bob Wells and Howard Wells and T. E. McShane and myself.

Q. Who is T. E. McShane?

A. He is the Grand Lodge Representative, International Association of Machinists.

Trial Examiner Myers: Could you fix the time of that meeting, what day, do you know the exact day?

The Witness: I can't recall the exact day, there was no [53] records kept at that time, but it was the last part of September.

(Testimony of George E. McKay.)

Q. (By Mr. Royster) Do you know who arranged this meeting?

A. Mr. McShane.

Q. What, if anything, was discussed at the meeting?

A. Well, there was——

Mr. Callister: Just a moment, I think I would like to have you just state what he said and what someone else said and no conclusions or opinions.

Mr. Royster: That is agreeable.

Q. (By Mr. Royster) What was said during the hearing?

Mr. Callister: Who said it?

A. We went in there to negotiate an agreement.

Mr. Callister: Please tell us just the conversation.

Trial Examiner Myers: That is right, you are in this conference now. Try to give us everything that you remember that was said and tell us who said it.

The Witness: Well,——

Trial Examiner Myers: We know that you can't give it verbatim, but just give us everything that you can now remember.

The Witness. Mr. McShane turned the agreement over to Howard Wells.

Trial Examiner Myers: You came there with a proposed agreement? [54]

The Witness: That is right.

Trial Examiner Myers: And Mr. McShane handed it to Howard Wells?

(Testimony of George E. McKay.)

The Witness: That is right.

Trial Examiner Myers: Did he say anything when he handed it to him?

The Witness: So Howard said "Yes."

Trial Examiner Myers: Did Mr. McShane say anything when he handed it to Mr. Howard Wells?

The Witness: He said "Look this over."

Trial Examiner Myers: Go ahead now.

The Witness: Which Howard did, started looking over, he just went through it roughly until he hit the wages. He said, "Why, God, we can't pay them wages." He said, "We ain't amaking nothing the way it is." And he said, "Before we could pay them wages we will close the place down." And he said, "Another thing, Joe Wells has to sign the agreements if any agreements are signed." So that was practically all that was said at that time.

Q. (By Mr. Royster) Was there any discussion about a bargaining unit? A. None at all.

Q. Was anything said about the Union's majority? A. Nothing.

Q. Do I understand your testimony to be that Mr. Howard Wells [55] said that any negotiations would have to be with J. W. Wells?

A. With Joe Wells. He said that Joe was in Las Vegas at that time.

Q. Was there any arrangement for a further meeting?

A. Mr. McShane tried to get ahold of Joe Wells.

Trial Examiner Myers: We mean at this meeting.

(Testimony of George E. McKay.)

The Witness: No.

Q. (By Mr. Royster) Did you have a conversation with Robert Wells about December 1, 1944?

A. I did.

Q. Where?

A. At Wells, Inc. shop on Evans Avenue.

Q. In Reno? A. Reno, Nevada.

Q. What time of day did this conversation take place?

A. This was just about the noon hour.

Q. Who was present other than you and Mr. Wells?

A. Well, the other boys around the shop and Jack Benton was just right inside the door around the corner.

Trial Examiner Myers: When did you say this took place?

The Witness: First of December.

Trial Examiner Myers: 1944?

The Witness: 1944.

Trial Examiner Myers: December 1, 1944?

The Witness: December 1, 1944. [56]

Q. (By Mr. Royster) What was said to you by Mr. Wells or by you to Mr. Wells?

A. Bob Wells told me he didn't want me to the shop. He said, "I don't want you in the shop bothering the men." I said, "I am not bothering the men. I came in to collect dues and see Jack Benton." He said, "I want you to get out of here and stay out."

(Testimony of George E. McKay.)

Q. Had it been your practice to collect dues at the shop? A. It had.

Mr. Callister: Please do not lead him, Mr. Royster.

Sorry, go ahead.

Q. (By Mr. Royster) Have you visited Wells shop since? A. I haven't.

Trial Examiner Myers: You have not?

The Witness: Have not.

Q. (By Mr. Royster) What were the men doing when you came in the shop?

A. They were getting ready to go to lunch.

Mr. Royster: I believe that is all.

Trial Examiner Myers: Mr. Callister?

Mr. Callister: Yes, I have, if I may, Mr. Examiner.

Cross-Examination

Q. (By Mr. Callister) Mr. McKay, I call your attention to this September meeting of 1944 at the office of Wells, Inc. in which you stated Mr. Howard Wells met you. Did he [57] not in effect tell you that Joe, his brother, who was the President, took charge of all negotiation with regard to labor contracts, and he couldn't do anything about it, is that right? A. That's right.

Q. That as far as he was concerned, he could not do anything. In other words, he had no authority whatsoever to do anything, isn't that about it?

A. That is right.

Q. And told you to see Mr. Joe Wells?

(Testimony of George E. McKay.)

A. That is it.

Q. And that if he could not do anything about the situation and that if anything could be done it would have to be done with Joe?

A. That is right.

Q. Now, Mr. McKay, coming back to this conversation you had with Bob Wells in the fore part of December, 1944, you said you came to see Mr. Jack Benton.

A. I came to collect dues and see Jack Benton.

Q. Is Mr. Benton the same individual who has testified here this morning?

A. That is right, he is.

Q. Who was the representative of Wells, Inc. in the shop?

A. He was supposed to be boss in the shop.

Q. That is right. You did not come to collect dues of [58] Mr. Benton because he was foreman?

A. I collected dues from Mr. Benton.

Q. You mean Mr. Benton is a member of your labor organization.

A. He is and has been.

Q. He is not an officer of the Lodge, is he?

A. He is.

Q. What was Mr. Benton at that time, what position did he hold?

A. He was a trustee and also a shop steward at Wells, Inc.

Trial Examiner Myers: That was on December 1, 1944?

The Witness: Yes, sir.

(Testimony of George E. McKay.)

Q. (By Mr. Callister) Trustee of the Local Lodge of 801? A. That is right.

Q. Mr. McKay, Bob himself told you he did not want you to bother the men while they were on the job, did he not?

A. He told me he didn't want me in the shop.

Q. Didn't he tell you himself in fact they did not permit any Business Agents to come into the shop and disturb the men, didn't he say that?

A. No, sir.

Q. But he told you he did not want you to come in there collecting dues in the shop?

A. He didn't say collecting dues, he said "I don't want you in the shop. Get out and stay out." He had seen me in there [59] many times before, but he never said that.

Mr. Callister: That is all.

Trial Examiner Myers: Any questions, Mr. Apperson?

Mr. Apperson: No questions.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: No further questions.

Trial Examined Myers: You are excused, sir, thank you.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please, Mr. Royster?

Mr. Royster: Mr. Anderson.

GLEN O. ANDERSON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Glen O. Anderson.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: A-n-d-e-r-s-o-n.

Trial Examiner Myers: Where do you live, Mr. Anderson?

The Witness: Las Vegas, Nevada.

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Royster. [60]

Q. (By Mr. Royster) What is your occupation, Mr. Anderson?

A. Business Representative for the International Association of Machinists and Business Representative for the International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

Q. How long have you held your office?

A. Business Agent of the Machinists since October of '41.

Trial Examiner Myers: Are both those organizations affiliated with the American Federation of Labor?

The Witness: Yes.

Trial Examiner Myers: Were they affiliated with the American Federation of Labor during the entire year of 1944?

(Testimony of Glen O. Anderson.)

The Witness: I will have to ask.

Trial Examiner Myers: Since May 1, 1944?

The Witness: Yes.

Trial Examiner Myers: And they are still affiliated?

The Witness: Yes.

Q. (By Mr. Royster) How long have you been a representative of the Blacksmiths?

A. Since April in 1943.

Q. Who is in charge of the membership records of the Union Local at Las Vegas? That is, by that I mean the Machinists Local?

A. The records are all kept in my office in Las Vegas and I am charged with the responsibility of safekeeping and use of these records. [61]

Q. Did you bring those records with you?

A. Some of them, yes.

Q. Do you know G. W. Hollenback?

Trial Examiner Myers: How do you spell that name, please?

Mr. Royster: H-o-l-l-e-n-b-a-c-k.

A. Hollenback, yes.

By Mr. Royster:

Q. Is he a member of the International Association of Machinists? A. Yes.

Q. By reference to your records can you tell when he joined the International Association of Machinists? A. Yes.

Q. When did he join?

A. I initiated Gregory W. Hollenback, G. W. Hollenback on August 28, 1944.

(Testimony of Glen O. Anderson.)

Mr. Callister: Where?

The Witness: Las Vegas, Nevada.

Mr. Callister: Who was he working for at that time?

The Witness: Wells, Inc.

Mr. Callister: At Vegas?

The Witness: At Las Vegas, or the Henderson shop.

Mr. Callister: I move to strike the testimony with regard to Mr. Hollenback. At that time that was Wells Cargo he was working for at Vegas. [62]

The Witness: At that time it was hard to tell which company was which. Now, I wouldn't gamble any money.

Mr. Callister: You did not know who he worked for at Vegas then, as I understand it?

The Witness: He worked for, as I understand it, he worked for Wells prior to his time coming to Las Vegas and Wells, Joe Wells himself or Dave Divine brought him in from Elko and Dave Divine recommended him as the member.

Mr. Callister: I do not think that is material.

Trial Examiner Myers: What about the motion, do you press your motion?

Mr. Callister: I move to strike as immaterial, incompetent and irrelevant here because it shows at that time he was a member he was not a part of the unit, could have not been.

Mr. Royster: That shows at the time of his initiation.

I haven't got to the question as to whether he is

(Testimony of Glen O. Anderson.)

now a member in good standing and has been since the initiation.

Mr. Callister: It makes no difference when he became a member if he is not tied up with the present unit.

Trial Examiner Myers: Is Hollenback supposed to be in the unit?

Mr. Royster: Yes, he was employed there the month of December, 1944, and he is a part of the unit.

Trial Examiner Myers: I will deny the motion. Not that [63] I am deciding anything at the present time, but it is your contention later he became a part of the Reno division of the Respondent?

Mr. Royster: That is correct.

By Mr. Royster:

Q. Has he been a member in good standing since the date of the initiation, according to your records?

Mr. Callister: If it is according to the records, they should be introduced and made a part of the record.

By Mr. Royster:

Q. Has he been a member in good standing since the date of his initiation?

Mr. Callister: That is calling for a conclusion and not the best evidence. The records are the best evidence.

Mr. Royster: Here is a man that is a Business Representative.

(Testimony of Glen O. Anderson.)

Trial Examiner Myers: Are you going to withdraw the question?

Mr. Royster: No.

Trial Examiner Myers: Read the question, please?

(Question read by the Reporter).

Trial Examiner Myers: I will sustain the objection.

By Mr. Royster:

Q. Do your records show the standing off the various individual members of the Union?

A. Yes, they show it.

Mr. Callister: Just a minute, yes or no.

By Mr. Royster:

Q. Will your records show the standing [64] of G. W. Hollenback since his initiation?

A. Yes.

Q. What do your records show?

A. Shows——

Mr. Callister: (Interposing) Just a moment. If he has the record here, I do not want to be technical, but I think he should introduce them and let the records speak for themselves.

Trial Examiner Myers: Overruled.

(Continuing) Shall I read from the record?

Trial Examiner Myers: Answer the question.

Will the Reporter read the question?

(Question read by the Reporter.)

(Continuing) Shows continuous membership up

(Testimony of Glen O. Anderson.)

until the present date from October 28th, 1944, until today.

Trial Examiner Myers: You mean he has been paying dues regularly?

By Mr. Royster:

Q. Well, now I believe you earlier testified that the date of initiation was August 28, 1944?

A. August 28, 1944.

Q. You just mentioned October 28, 1944.

A. August I meant. 8/28/44.

Q. Do you know A. B. Gandrud? A. Yes.

Q. Is he a member of the International Association of [65] Machinists? A. Yes.

Trial Examiner Myers: What book is that that you have before you?

The Witness: Financial Secretary's dues ledger book.

Mr. Callister: With respect to this last question and answer, will you tell us when he was a member, if he still is?

Mr. Royster: I am going to get to that.

Trial Examiner Myers: Please read the question.

(Question read by the Reporter.)

The Witness: The answer is "Yes."

By Mr. Royster:

Q. Do you know when he joined the International Association of Machinists?

A. He was taken in as a member on February 4, 1942.

(Testimony of Glen O. Anderson.)

Mr. Callister: Mr. Examiner, I wonder if I at this time in order to clear up my questions here can interrogate the witness as to what these books are. I think I should have that right.

Trial Examiner Myers: You may.

Cross Examination

By Mr. Callister:

Q. Mr. Anderson, what books are you referring to there?

A. The Financial Secretary's dues ledger records.

Q. Of what Local? [66]

A. Of the International Association of Machinists.

Q. Located where?

A. United States and Canada or England.

Q. Do you mean to tell me these records here show the dues of everybody in the United States who is a machinist?

A. Shows the dues of the members working in our locality.

Q. All right, now, isn't this true, Mr. Anderson: these records are the records of the Local at Vegas and not at Reno?

A. These are Local 845 records.

Q. That is correct, and Local 845 is the Machinists Local at Vegas, isn't that right? It is, or it isn't.

A. It is its jurisdiction.

Q. Please answer the question, Mr. Anderson. Are these the records of the Local Lodge at Vegas? It isn't a laughing matter. This is serious, frankly.

(Testimony of Glen O. Anderson.)

A. The question is laughing.

Trial Examiner Myers: Wait a minute. Answer the question.

A. It is not confined to Las Vegas.

Mr. Callister: All right, now, if these are not the records of Local 845, what Local are they the records of?

The Witness: They are the Local records of Local 845.

Trial Examiner Myers: Both books that you have there? [67]

The Witness: Yes.

By Mr. Callister:

Q. Now, you have been in your testimony this morning referring in respect to Mr. Gandrud and in respect to Mr. Hollenback, you have been referring to these records which are the records of Local 845, are they not?

A. Of the International Association of Machinists.

Q. Yes, and when you say they have been paying dues, they have been paying dues to Local 845 at Vegas. That is correct, is it not?

A. And to the International Association of Machinists.

Q. That is right; but 845, is that right?

A. Not confined to 845. The dues are paid through a Local for the International.

Q. Well, Mr. Anderson, isn't this true——

Trial Examiner Myers: Let us not get into an argument.

(Testimony of Glen O. Anderson.)

Mr. Callister: I think this is true, I think the statement made by Mr. Anderson is not correct.

Trial Examiner Myers: Just ask him about these books now.

Mr. Callister: I will take this later on, thank you.

Redirect Examination

By Mr. Royster:

Q. Has Mr. Gandrud been in good standing with the International Association of Machinists since the date of his initiation? A. Yes. [68]

Trial Examiner Myers: You mean he has been paying dues ever since?

The Witness: Yes.

Mr. Callister: Now, at this time, Mr. Examiner, I move to strike his testimony in respect to Mr. Gandrud and Mr. Hollenback on the ground that it is immaterial, incompetent and irrelevant, that the Local 801 is supposed to be the Union claimed to be the designated bargaining agent, and the mere fact that they pay it to another Local cannot have any materiality here.

Trial Examiner Myers: Motion denied.

By Mr. Royster:

Q. Mr. Anderson, did you meet with Mr. J. W. Wells about the 16th of May, 1944?

A. Very definitely yes.

Q. Where did this meeting take place?

A. At Wells' office at Henderson.

Q. Where is that near?

A. Near Las Vegas.

(Testimony of Glen O. Anderson.)

Q. Who attended the meeting?

A. J. W. Wells, T. E. McShane, International Representative of Machinists, and myself as representing the Machinists

Trial Examiner Myers: When did you say this meeting took place?

The Witness: May 16th, 1944.

By Mr. Royster:

Q. Now, do you recall what took place at [69] the meeting, what conversations were had?

A. The first part of the meeting was the signing of the Wells——

Mr. Callister: (Interposing) Just a moment, I think we should have the conference, what you said.

Trial Examiner Myers: Tell us what was said and what was done, will you please?

The Witness: That would take two or three hours.

Trial Examiner Myers: Go ahead.

Mr. Callister: I think he should, Mr. Royster, tell us what conversations you want, what point.

Mr. Royster: You object to my leading a witness.

Trial Examiner Myers: Will you please tell us everything you remember was said there, what was done?

The Witness: We came in, we discussed the final signing of the Wells agreement.

Trial Examiner Myers: What agreement was that?

(Testimony of Glen O. Anderson.)

The Witness: That was the Wells—you got me on the names of these.

Trial Examiner Myers: Covering what men, what division?

The Witness: Wells Cargo, Inc. agreement.

Trial Examiner Myers: That hasn't anything to do with the people involved in this case, has it? Did you talk about the people involved in this case?

The Witness: Yes. [70]

Trial Examiner Myers: Tell us about that conversation.

The Witness: After the signing of the agreement we presented him a copy, identical copy of the agreement for the Reno shop, and we discussed the clauses of the agreement, and an arrangement was made that we should——

Mr. Callister: Just a minute. I object to that on the grounds——

Trial Examiner Myers: Don't break in. Let him go ahead, and if you have anything you want to strike out, strike it out.

Don't tell us any conclusions, tell us what you remember was said. We will draw our own conclusions.

The Witness: The agreement was discussed regarding the employees, the working conditions of employees at the Reno shop for the International Association of Machinists and the conclusion was——

Trial Examiner Myers: Never mind what the

(Testimony of Glen O. Anderson.)

conclusion was. Who said what, that is what we want to know.

You gave him an agreement and what was said about the agreement?

The Witness: We discussed each paragraph of the agreement and we had our suggestions and he made his suggestions as to type or the clauses of the agreement for the Reno shop, and the matter of overtime and hours dragged into quite a lengthy discussion and it was agreed that we would meet later in Reno [71] approximately fifteen days, ten or fifteen days later to meet with the balance of the Wells brothers to go into further negotiations.

By Mr. Royster:

Q. Well, now, did you meet with the Wells brothers fifteen days or so later?

A. Approximately around the 3rd of June is as close as I can remember the date.

Q. Did you meet with the Wells brothers at that time?

A. We met with—I can't, at that time I couldn't tell the difference between——

Trial Examiner Myers: Yes or no, did you meet with them?

The Witness: Yes.

By Mr. Royster:

Q. Where did that last meeting take place?

A. Wells' office in Reno.

Mr. Royster: I believe that is all.

Trial Examiner Myers: Any questions, Mr. Callister?

(Testimony of Glen O. Anderson.)

Mr. Callister: Yes.

Recross Examination

By Mr. Callister:

Q. On the 16th day of May, 1944, Mr. Anderson, when you met with Mr. Joe Wells, did you have any authorizations with you at that time showing the employees that designated Local 801 as bargaining agent?

A. We had the——

Q. (Interposing) Did you have them with you at that time? [72]

A. They were not presented to Wells, no. We told him they were members.

Q. I didn't get that.

A. We told him they were members or applicant members. All of his employees at his Wells Reno operation shop.

Q. You mean you had authorizations signed which are identical with Exhibit Board's 2(c)?

A. We did not present——

Q. (Interposing) Did you have these signed by the employees on May 16, 1944, which are identical with Board's 2(c)?

A. No, we had our financial records.

Q. Now, did you ever have any of these prior to June 3, 1944?

A. Not that I remember.

Q. I see. So then on May 16, 1944, you did not have authorizations comparable with Exhibit 2(c), isn't that correct? A. No.

(Testimony of Glen O. Anderson.)

Q. It is not correct? A. No.

Q. Did you have these then?

A. Not those.

Q. Listen to the question. I want to know whether you had on May 16th, when you saw Mr. Wells, authorizations comparable——

Trial Examiner Myers: He doesn't know the word [73] "comparable."

Mr. Royster: I object to the form of the question.

Trial Examiner Myers: Use another word.

By Mr. Callister:

Q. Did you have on May 16, 1944, slips which read in substance and effect as Exhibit 2(c)?

A. We did not have them with us.

Q. Did you have them signed at that time?

Mr. Royster: If you know.

A. Membership applications were signed, yes.

By Mr. Callister:

Q. I am asking you about 2(c), Mr. Anderson. Did you have this type?

Trial Examiner Myers: You mean whether they designated 801?

Mr. Callister: That is right. The reason I referred to 2(c), I have the record straight.

Trial Examiner Myers: He has not read them.

The Witness: Can I say something off the record?

Trial Examiner Myers: Not off the record, but on the record.

(Testimony of Glen O. Anderson.)

The Witness: Our membership applications state practically the same thing. The reason the argument is continuing is that they state practically the same thing.

By Mr. Callister:

Q. But you didn't have—read this 2(c), will you?

A. "I hereby designate——" [74]

Q. (Interposing) Read it to yourself.

Do you know what it means?

A. I sure do.

Q. Did you have anything such as that signed on May 15th by the employees of the Reno division?

A. Yes, they were signed.

Q. Where are they now?

A. They should be in the files of the International Association of Machinists.

Mr. Callister: If the Examiner please, at this time on behalf of Respondent I make demand for them, I feel they are material.

Trial Examiner Myers: You are making a demand of me?

Mr. Callister: No, the witness.

The Witness: I don't have them with me.

Mr. Callister: Can you secure them?

The Witness: I am quite sure I can.

Mr. Callister: When?

The Witness: I can't answer that question, unless I can talk to somebody; I don't know.

Mr. Royster: Well, I do not think the demand is well taken. Mr. Callister is trying to knock

(Testimony of Glen O. Anderson.)

down a straw man here. There has not been any evidence.

Trial Examiner Myers: If they want to produce them they can produce them. You haven't anything to do with that. [75]

Mr. Royster: All right.

Trial Examiner Myers: Any other questions?

Mr. Callister: That is all.

Trial Examiner Myers: Any redirect?

Mr. Royster: No redirect.

Trial Examiner Myers: Mr. Apperson?

Mr. Apperson: No questions.

Trial Examiner Myers: You are excused, sir, thank you very much.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, Mr. Royster?

Mr. Royster: My next witness will run for quite a while.

Trial Examiner Myers: How long?

Mr. Royster: An hour.

Trial Examiner Myers: We will stand adjourned now until 1:30.

(Thereupon, at 12:30 p.m. a recess was taken until 1:30 o'clock p. m.) [76]

After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 1:45 o'clock p.m.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Callister: We are, Mr. Examiner.

Mr. Royster: Mr. McShane.

T. E. McSHANE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: T. E. McShane.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: Mc S-h-a-n-e.

Trial Examiner Myers: Where do you live, Mr. McShane?

The Witness: I live in Rialto, California.

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Royster.

By Mr. Royster:

Q. What is your occupation, Mr. McShane?

A. I am a representative of the International Association of Machinists.

Q. How long have you been so employed?

A. I have been so employed since January 1, 1940. [77]

Q. What are your duties?

A. My duties are to represent the Machinists Union in all matters pertaining to Union business in any place that they have need of representation.

(Testimony of T. E. McShane.)

Q. Is your authority to represent employees limited in any respect?

A. My authority to represent the employees of the organization is not limited in any way.

Q. When I spoke of employees I meant employees who are members of the International Association of Machinists.

A. That was what I answered for. I was also referring to members of the International Association of Machinists.

Q. Do you know J. W. Wells?

A. I do.

Q. Did you have a meeting with him on May 16, 1944?

A. I did.

Trial Examiner Myers: Is that John Wells, President?

Mr. Royster: Joe Wells.

Trial Examiner Myers: President of the Respondent?

Mr. Royster: That is correct.

By Mr. Royster:

Q. Where did this meeting take place?

A. The meeting was held in Wells offices at Henderson, Nevada, which is near Las Vegas, Nevada.

Q. Who was present at this meeting?

A. Joe Wells, Glen Anderson, and myself. [78]

Q. What was the occasion of the meeting?

A. The meeting covered two subjects: the first part of the meeting, the final signing of an agreement for one of the Wells operations was completed.

(Testimony of T. E. McShane.)

Then the second phase covered was my asking Joe Wells at that time to negotiate for the Reno employees which he had stated that he would negotiate for them after we signed the agreement for the Wells Cargo ore haul.

Q. Well, what was said with respect to the Reno employees?

A. I asked Mr. Wells to negotiate for the Reno employees using the agreement that we had just signed as a basis for the negotiation for the Reno employees.

Q. Did you discuss the unit?

A. The unit was understood between both Wells——

Mr. Callister: (Interposing) Just a minute. Just what you said and what he said, not what you understood.

The Witness: The unit was known to both parties.

Mr. Callister: I want the conversation. I think that is what we should have.

Trial Examiner Myers: Tell us what was said regarding the unit, if anything.

The Witness: The unit was to——

Mr. Callister: What did you say and what did he say.

Trial Examiner Myers: Don't instruct the witness, just object. [79]

The Witness: I told them that the unit that we wished to represent was the same unit that we had just represented in the other agreement.

(Testimony of T. E. McShane.)

Q. (By Mr. Royster) What was that unit in the other agreement?

A. That was mechanics, their helpers, and the classification of machinist Diesel specialists, which classifications covered all the employees.

Q. What there any conversation with respect to your representing a majority of the Reno employees?

A. They did not question at that time whether we represented the employees or not.

Q. Did you make any representations to Mr. Wells with respect to a claim of majority?

A. I told Mr. Wells that the employees of the Wells Company in Reno, in their operation, a majority of them were members of the Machinists organization, and that we desired to negotiate the agreement for them and that was not questioned by Mr. Wells.

Q. Was there any discussion of wages?

A. The wage was discussed, and Mr. Wells informed us that the wages paid in Las Vegas which we were asking for were prohibitive on this operation.

Q. Let me see if I understand your answer.

Is it that he could not pay the same wages at Reno that he was paying at Las Vegas? [80]

A. That is correct.

Q. Well, can you tell us anything further in the way of conversations that took place at this meeting?

A. Mr. Wells stated that he could not at that

(Testimony of T. E. McShane.)

time negotiate the agreement but that he would meet at a later date for the purpose of negotiating an agreement covering the Reno employees.

Q. Was there any agreement with respect to a date for the subsequent meeting.

A. There was no definite date set at that time for a future meeting. There would be a meeting at a later date.

Q. Did you have the meeting at a later date with Mr. Wells?

A. Not as a result of that meeting.

Q. Did you make any attempt to have a meeting at a later date?

A. I made several attempts to meet with Joe Wells and made several attempts to meet with the other two Mr. Wells, Mr. Howard Wells and Mr. Bob Wells, and did meet with them at a later date.

Q. Did you have any correspondence with Mr. Joe Wells with respect to a meeting?

A. In August I believe about the first part of August I sent Mr. Wells a letter notifying him that we did represent all of his people and sent the letter as an official request to sit down and negotiate the agreement. [81]

Mr. Royster: Will the Reporter mark this as Board's Exhibit 5 for identification.

(Thereupon the document above referred to was marked Board's Exhibit No. 5 for identification.)

Q. (By Mr. Royster) I show you what purports to be a copy of a letter addressed to Mr. Joe

(Testimony of T. E. McShane.)

Wells and bearing the typewritten signature of T. E. McShane, and ask if you can identify it?

A. That is the copy, this is a copy of the letter that I wrote and mailed to Mr. Wells at the address indicated.

Q. Did you place the original of this letter in an envelope? A. I did.

Q. Did you address it? A. I did.

Q. To where did you address it?

A. To Mr. Joe Wells at Las Vegas, Nevada.

Q. Did you place postage on the letter?

A. I did.

Q. What did you do with it?

A. I dropped it in the mail box in the post office at Reno.

Mr. Royster: I offer Board's Exhibit 5 for identification in evidence.

Trial Examiner Myers: Any objection?

Mr. Callister: No, we have no objection.

Trial Examiner Myers: There being no objection, the [82] paper is received in evidence, and I will ask the Reporter to please mark it Board's Exhibit No. 5.

(The document heretofore marked Board's Exhibit No. 5 for identification was received in evidence.)

Q. (By Mr. Royster) Did you receive a reply to Board's Exhibit 5? A. I did not.

Trial Examiner Myers: You mean a written reply?

(Testimony of T. E. McShane.)

Q. (By Mr. Royster) A written reply, or any kind of a reply?

A. I did not receive a reply of any nature to that letter.

Q. Did you meet with Howard and Bob Wells in September, 1944? A. I did.

Q. Where did this meeting take place?

A. It took place in the offices of the Reno shops here in Reno, Nevada, the Wells shops.

Q. Who was present other than those I have named?

A. Both Bob and Howard Wells.

Trial Examiner Myers: Could you fix the time a little better, what part of September?

The Witness: I have no written record of the date of that meeting, but as near as I can recall it was in the latter half of September.

Q. (By Mr. Royster) What year? [83]

A. 1944.

Q. Who was present at this meeting?

A. Mr. Bob Wells, Mr. Howard Wells, Mr. Glen Anderson, and myself.

Q. Was George McKay present at this meeting?

A. I beg your pardon, it was George McKay present instead of Anderson.

Q. Was there conversation at this meeting?

A. There was conversation.

Q. Can you tell us what it was?

A. Mr. McKay and I appeared at the Wells office and asked to see the Mr. Wells, and after waiting a few minutes we were escorted into the room where the two Mr. Wells were.

(Testimony of T. E. McShane.)

Q. Will you state again at this point which of the Wells you mean?

A. Mr. Howard and Mr. Bob.

Q. Continue.

A. I stated what our purpose was there, that we wished to negotiate an agreement covering our employees there, our members who were employed there. I presented them with the proposed agreement. One of the Mr. Wells, I wouldn't say for sure which one it was, took the agreement and read part way through it and he informed us that the wages we were asking were too high, that they would shut up and would have to shut their business up if they had to pay that kind of [84] wages.

The unit was not discussed and the representation was not questioned.

Q. Did you make any offer to prove a majority?

A. At that time we told them that we would submit proof that we represented these people.

Q. But you did not actually submit it at this meeting?

A. We did not submit it at that meeting, that is correct.

Q. Was there any mention of Joe Wells at this meeting?

A. We were informed, I was informed by one of the Mr. Wells that they were not authorized to sign Union agreements and that would have to be done by Mr. Joe Wells, who was President of the Company.

(Testimony of T. E. McShane.)

Trial Examiner Myers: Did you leave the agreement with them?

The Witness: The agreement was left there.

Q. (By Mr. Royster) Did you meet with Joe Wells on October 5, 1944? A. I did.

Q. Where did this meeting take place?

A. In the Wells office at Henderson, Nevada, near Las Vegas.

Q. Who was present?

A. Mr. Joe Wells, Mr. Glen Anderson, and myself.

Q. Were there conversations at this meeting?

A. There was conversation at that meeting. [85]

Q. Will you give us your recollection of the conversations?

A. Mr. Anderson and I appeared at the Wells office and asked to see Mr. Wells and we were granted the opportunity, and we went into the office, Mr. Wells' office, and we presented Mr. Wells with an agreement which was identical to the one that had been negotiated by them before covering the other operation.

Trial Examiner Myers: What other operation?

The Witness: The Wells Cargo operation.

Trial Examiner Myers: Was that the same agreement that you presented to him on May 16, 1944?

The Witness: That is correct, the same agreement. Mr. Wells looked at it a minute and he said, "You said you would give proof of representation of your people," and we presented the author-

(Testimony of T. E. McShane.)

izations, and—is it permissible to use the language he used?

Trial Examiner Myers: Certainly.

The Witness: He looked the authorizations over and he said: “Hell, you’ve got everybody on there but me.”

“Oh,” I said, “well, we are not going to discriminate against you. You can sign one of them too.”

So he laughed and he looked the agreement over and we started talking, and he said: “This paragraph is O.K.”

Trial Examiner Myers: Did he refer to any particular paragraph? [86]

The Witness: He started at the first of the agreement, and paragraph after paragraph, as we went down he said, “These are O.K.”, until we came to the overtime provision. At that time Mr. Wells stated that he would not, he informed us that his operation was under the jurisdiction of the ICC, and that he did not have to pay overtime over eight hours or over forty, and would not. So I told Mr. Wells that I would present signed agreements as proof that trucking industries similar to him did pay overtime for over eight hours and forty hours, and he asked me to produce that evidence. I had that evidence in the form of copies of signed agreements between our Union and other trucking industries.

Trial Examiner Myers: That is what you said to him?

(Testimony of T. E. McShane.)

The Witness: I showed him copies.

Trial Examiner Myers: You showed him copies?

The Witness: That is right, we had them there.

Trial Examiner Myers: How many did you show him?

The Witness: I think we had three at that time, two or three. However, I told him that I would get more.

Mr. Wells at that time sat there and studied a minute and he said, "Well, the boys in Reno are going to have to operate that business," and he said, "I am not going to tie them up to any conditions without them being in on the deal." And he says, "I will meet you in Reno in about ten [87] days and at that time in company with Bob and Howard we will resume negotiations."

Q. (By Mr. Royster) Now, was there anything said during this meeting of October 5th with respect to a bargaining unit? A. There was.

Q. Will you tell us what was said?

A. I informed Mr. Wells that the bargaining unit that we wished to represent had been changed a little since the first time that we had talked to him on account of an operation that was a little different than it was at that time, which was a body shop that they had opened up in the meantime. I told him that we also represented those people in the body shop and wished to include them in the unit. Mr. Wells says, "What will you call them?" And I said, "They will all be mechanics." He asked what wage rate we would demand for them and we

(Testimony of T. E. McShane.)

told him that the wage rate of them would be the same as a journeyman mechanic.

Q. Did you tell Mr Wells the classifications of employees at Reno that you claimed to represent?

A. We did. We told them.

Trial Examiner Myers: At what meeting?

The Witness: At this that we are still talking about, the October meeting.

Mr. Wells objected to one classification that we were [88] asking to represent and that was the classification of machinist Diesel specialist. He didn't think that that should be brought up to this operation. We told him then that we would ask to represent mechanics, automotive machinists, their helpers, and that we would ask to include all the people in the shop who were doing mechanical work in the body shop as mechanics.

Q. (By Mr. Royster) Was this definition given orally?

A. That definition was given orally, yes, at that meeting, that definition was given orally.

Trial Examiner Myers: Did that include the Diesel specialist?

The Witness: We agreed to discontinue the Diesel specialist.

Trial Examiner Myers: You agreed to forget jurisdiction over the Diesel specialist?

The Witness: We agreed to change the classification to automotive machinist.

Trial Examiner Myers: In other words, you

(Testimony of T. E. McShane.)

mean that you agreed to exclude the Diesel specialist from the unit?

The Witness: We did not wish to exclude him, we merely changed the name of the classification from machinist Diesel specialist to automotive machinist.

Trial Examiner Myers: How many were there, approximately? [89]

The Witness: I would say there would be two.

Trial Examiner Myers: What did Mr. Wells say about that?

The Witness: Well, he did not agree to it or he didn't disagree to it.

Trial Examiner Myers: Did he say anything about it?

The Witness: He said that would have to be figured out at a later meeting, that it would be discussed.

Q. (By Mr. Royster) Now, when you say that it had to be figured out at a later meeting, it had to be discussed, what did you have in mind, what had to be discussed?

Mr. Callister: We object to it on the ground as calling for a conclusion.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Royster) What was there that remained for discussion at another meeting?

A. According to Mr. Wells' objections to the things he objected to that we asked for, it was the wages, the overtime provisions of the agreement.

(Testimony of T. E. McShane.)

and the one classification which was machinist Diesel specialist.

Q. Let me see if I understood this clearly. Is it your testimony that Mr. Wells objected to having such a classification in his Reno shop as machinist Diesel specialist? A. That is correct.

Q. Is it also your testimony that you agreed that such a [90] classification would not be imposed on any contract entered into covering Reno employees?

A. We agreed that if we could substitute the automotive machinist instead of the machinist Diesel specialist.

Q. At the close of the meeting there was actually no agreement?

A. There was no agreement.

Q. On that point?

A. On that point, that is correct.

Mr. Royster: Will the Reporter mark this as Board's Exhibit 6 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 6 for identification.)

Q. (By Mr. Royster) I show you Board's Exhibit 6 for identification, Mr. McShane, and ask you if you recognize it?

A. This is the agreement that we asked him to sign a duplicate agreement for Reno with the exception of the wage scale.

Q. What is the document itself if you know?

(Testimony of T. E. McShane.)

A. This is the bargaining agreement between the Wells Cargo, Inc. and the International Association of Machinists, signed between the Company and the International Association of Machinists, signed for the Company by J. W. Wells, and for the Machinists by Glen O. Anderson and myself.

Trial Examiner Myers: When?

The Witness: On the 16th day of May, 1944.

Mr. Royster: I offer Board's Exhibit 6 for identification in evidence.

Trial Examiner Myers: Any objection?

Mr. Callister: Yes, we object to it on the ground it is immaterial, incompetent and irrelevant.

Trial Examiner Myers: What do you want to prove by that paper.

Mr. Royster: I am going to show it to him after it has been admitted and ask him to point out the paragraphs upon which it appears from his testimony there was agreement to cover the Reno shop during this meeting of October 5th.

Trial Examiner Myers: Is that the only purpose?

Mr. Royster: Yes.

Trial Examiner Myers: Any objection to that limited purpose, Mr. Callister?

Mr. Callister: Now, state your purpose again, please, if you will.

Mr. Royster: My recollection of this witness' testimony is that he showed that agreement to Joe Wells on October 5th and said, "We want this same agreement in Reno to cover the Reno shop." And

(Testimony of T. E. McShane.)

he said that Joe Wells went down and said, "That is all right." And he come to a certain point, and he said, "I don't agree to this." And if his recollection is sufficient to do so, I want him to testify as to what portions of that contract Mr. Wells indicated he would agree to to [92] cover Reno and also I want this in for the purpose of showing that this was the document which was offered to Joe Wells on October 5th as the agreement that they wanted to have in Reno.

Mr. Callister: We make the same objection, Mr. Chairman.

Trial Examiner Myers: Why? What is the basis for your objection?

Mr. Callister: This is an agreement between an entirely different outfit. Now, if this is an agreement—do I understand this agreement was presented to Mr. Wells, is that the purpose of it?

Mr. Royster: Yes, that is my understanding of the testimony.

Mr. Callister: We have no objection for that limited purpose.

Trial Examiner Myers: Very well, there being no objection the paper is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit No. 6.

(The document heretofore marked Board's Exhibit No. 6 for identification was received in evidence.)

Trial Examiner Myers: The paper is received

(Testimony of T. E. McShane.)

in evidence only for the purpose as stated by Mr. Royster.

Q. (By Mr. Royster) Now, I show you Board's Exhibit 6, Mr. McShane, and ask if you can point to those paragraphs which as you testified Mr. Wells indicated he would agree in [93] a contract covering the Reno shop.

Mr. Callister: Just a minute, I think the government here is putting words in the witness' mouth. That is not in evidence. I think the preface of that question should be stricken. I think the question should be reframed.

Trial Examiner Myers: I will sustain the objection.

Tell us what was said about that contract by Mr. Joe Wells.

The Witness: When we presented it to him he looked it over, he knew it was——

Trial Examiner Myers: Never mind, what did he say about it?

The Witness: He said, "I don't see anything wrong with this or this." And he went over the Articles here and read them until he got down——

Trial Examiner Myers: To what Article, what is the designation of the Article, 1, 2 or what?

The Witness: Until he got to Article 4, where it states the standard work day and week.

Trial Examiner Myers: Go ahead, Mr. Royster.

Q. (By Mr. Royster) Was that, was there objection raised to other portions of that agreement?

A. There was no objection raised at that time to

(Testimony of T. E. McShane.)

anything with the exception of that and the wages that we told him that we asked for. We asked him for the same wage that was [94] contained in this agreement and he again stated——

Q. (Interposing) Under what paragraph, the same wage contained in that agreement under what paragraph?

A. Under Article 8.

Trial Examiner Myers: This is the contract that is in evidence as Board's Exhibit 6?

The Witness: That is correct. Designated as minimum wage scale.

Trial Examiner Myers: Go ahead, Mr. Royster.

Q. (By Mr. Royster) Now, you testified, Mr. McShane, that during the meeting of October 5th Mr. Joe Wells said that he and Howard and Robert Wells would meet with you in Reno in about ten days.

A. Mr. Wells stated that he had to go some place and would not be able to get back for about ten days and that he would meet with the Machinists' representative, including myself and his two brothers for the purpose of negotiating an agreement.

Q. Well, now, did such a meeting take place?

A. That meeting did not take place.

Q. Did you come to Reno?

A. I came to Reno and Mr. Wells did not appear for the meeting.

Trial Examiner Myers: That is Mr. Joe Wells?

The Witness: Mr. Joe Wells. [95]

(Testimony of T. E. McShane.)

Q. (By Mr. Royster) When did you come to Reno?

A. I came to Reno three or four days after the 5th, which would be about the 10th, between the 8th and 10th of October, and I stayed there until the first of November.

Trial Examiner Myers: The first of November, did you say?

The Witness: The first of November, that is correct.

Q. (By Mr. Royster): Did you see Mr. Joe Wells during that period?

A. Mr. Joe Wells came through Reno on his way to a fishing trip or hunting trip I believe. I saw him one time and he stated that he could not be back for quite a while and went on the trip without any negotiations whatever, just a few minutes conversation.

Trial Examiner Myers: Where did you see him?

The Witness: In front.

Trial Examiner Myers: I mean what town?

The Witness: Reno.

Trial Examiner Myers: Could you fix the time when that was?

The Witness: I cannot fix the exact date.

Trial Examiner Myers: What is the approximate date?

The Witness: I believe it was between—I can't say definitely whether it was in September or October.

Trial Examiner Myers: Well, was it before you

(Testimony of T. E. McShane.)

had that talk in Las Vegas on October 5th or after that? [96]

The Witness: I can't definitely say whether it was or not. I do not remember.

Q. (By Mr. Royster) At any rate you testified that there was some understanding that about ten days after October 5th there would be a meeting in Reno? A. That is right.

Q. You came to Reno for what purpose?

A. To fill that meeting.

Q. Did you have such a meeting?

A. We did not.

Mr. Royster: Will the Reporter mark this as Board's Exhibit 7 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 7 for identification.)

Q. (By Mr. Royster) I show you Board's Exhibit 7 for identification and ask if you can identify it?

A. I can. That is a telegram that I sent to Mr. Joe Wells at Las Vegas, Nevada, on October 30th informing him——

Q. (Interposing) You do not have to go into the subject matter of the telegram at the moment.

From where did you send that telegram?

A. Reno, Nevada.

Q. To where? A. Las Vegas, Nevada.

Q. By what service did you send it? [95]

A. Western Union.

Q. Did you file it at the Western Union office here in town? A. I did.

(Testimony of T. E. McShane.)

Q. Did you pay the charges?

A. I did.

Q. Did you ever receive any notification with respect to the delivery or non-delivery of the telegram?

A. I received an answer from this telegram.

Mr. Royster: I offer Board's Exhibit No. 7 for identification in evidence.

Trial Examiner Myers: Any objection, Mr. Callister?

Mr. Callister: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to mark it as Board's Exhibit No 7.

(The document heretofore marked Board's Exhibit No. 7 for identification was received in evidence.)

Q. (By Mr. Royster) Now, you testified, Mr. McShane, that you received a reply to this telegram.

Will the Reporter please mark that as Board's Exhibit 8 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 8 for identification.)

Q. (By Mr. Royster) I show you Board's Exhibit 8 for [98] identification and ask you if you can identify it?

A. That is the answer I received from Joe Wells in answer to my telegram just sent prior.

(Testimony of T. E. McShane.)

Mr. Royster: I offer Board's Exhibit 8 for identification in evidence.

Trial Examiner Myers: Any objection?

Mr. Callister: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit No. 8.

(The document heretofore marked Board's Exhibit No. 8 for identification was received in evidence.)

Trial Examiner Myers: What is Mr. Joe Wells' middle initial? Is it W. or A.?

Mr. Callister: W.

Q. (By Mr. Royster) Now, what, if anything, did you do after receiving Mr. Well's wire, which is in evidence as Board's Exhibit 8?

A. When I received that telegram from Mr. Wells, feeling that he wasn't acting as he had promised he would, I sent the telegram to E. P. Marsh of the Conciliation Service of the United States Department of Labor, asking for the services of a Conciliator in the dispute.

Q. Was a Conciliator assigned?

A. There was a Conciliator assigned. It was Conciliator [99] Adolph Hoch.

Q. Did you meet with the Conciliator?

A. I did.

Q. Where? A. In Reno.

Q. When? A. November 6th.

(Testimony of T. E. McShane.)

Q. Of what year? A. 1944.

Q. What developed, what, if anything, developed from that meeting?

A. The Commissioner of Conciliation Hoch contacted the Wells Company and was informed——

Q. (Interposing) Just a minute. Did you go with Mr. Hoch to the Wells Company?

A. Mr. Hoch called on the Wells Company before I went with him.

Q. On any occasion did you go with Mr. Hoch to the Wells Company?

A. I called at the Wells Company the following day in company with Mr. Hoch, but there was nothing transpired.

Q. Well, did you meet on that day with any of the Wells?

A. No meeting with the Wells that I recall.

Q. Now, did Mr. Hoch continue to be the Conciliator in this case? [100]

A. Mr. Hoch acted as Conciliator in contacting Mr. Joe Wells and was informed by Mr. Wells that instead of meeting in the Southern part of Nevada or the Southern part of California, that he desired to meet in Reno instead and Mr. Hoch asked that a different Conciliator be assigned to the case, which was done, Conciliator Curtin was assigned to the case instead of Mr. Hoch.

Q. Did you have a meeting with the Conciliator, Conciliator Curtin? A. We did.

Q. When did that meeting take place?

(Testimony of T. E. McShane.)

A. As I recall that meeting, it was on December 22nd.

Q. Of what year? A. 1944.

Q. Where was this meeting held?

A. This meeting was held in the Wells offices in Reno.

Q. Who was present?

A. Mr. Howard Wells, Mr. Joe Wells, the Conciliator Curtin and myself.

Q. Were there conversations at this meeting?

A. There were conversations, yes.

Q. Will you give us your recollection of these conversations?

A. Mr. Curtin, Commissioner Curtin informed the Wells the purpose of calling them and discussion started between Mr. Joe Wells and myself, and I don't recall the discussion [101] word by word, but the things that were discussed was at that time that Mr. Wells then brought up the question, "Do you represent the people?"

We again referred to the authorizations from their employees and Mr. Wells, after studying a while, said, "Well, I guess I will go ahead and negotiate." Which we proceeded to do. However, after discussing, I would say failing to agree on various articles that he had agreed to in Las Vegas, Mr. Wells, at this December 22nd meeting, demanded that we submit a new agreement with an open shop clause and without the overtime clause where it applied to 40 hours and 8 hours per day, and also the rate of pay, and at that time he asked me

(Testimony of T. E. McShane.)

again what unit we petitioned for, and at that time I told him that we still petitioned for the same unit that we had told him about in Las Vegas on October 5th, which would be mechanics, automotive machinists, and welders, the helpers of all classifications, and all the employees in the body shop that were doing mechanical work we considered were all of the employees.

Q. Did Mr. Howard Wells or Mr. Joe Wells or any of the Messrs. Wells who were present make any comment about that unit?

A. Sometime shortly after the meeting started, Mr. Howard Wells got up and left the room. He was gone for a period of time, I do not know the exact period that he was gone for, [102] but in a little while he came back and came into the room and called Mr. Joe Wells out of the room, and Mr. Joe Wells went out of the room and they were gone possibly a half hour, maybe not that long. They were gone quite a little while and during their absence Mr. Curtain got up and walked the floor and said he thought that was a little unusual, he couldn't imagine what they were doing, one thing and another. He seems to be a little dissatisfied about being put on the spot there.

Mr. Callister: Just state the conversation.

By Mr. Royster:

Q. Just what occurred in the presence of the Wells?

A. Mr. Joe Wells came back and said that they had been out and talked with their employees.

(Testimony of T. E. McShane.)

They found out that some of them didn't wish the Union to represent them and that they would not at that time recognize us as representing his employees, but would demand an election before they would go any further.

Trial Examiner Myers: Then what happened?

The Witness: The argument broke out over again, the Commissioner who was conducting the case stated that he thought the authorizations looked authentic and I think he suggested, in fact I know he suggested that they continue with the negotiations, that the actions of the Wells brothers in going out and talking to their employees at that time was [103] rather unbecoming and he suggested that we continue with the negotiations. The Wells brothers refused to do so and at that time they brought up the question of Jack Benton again. Their contention was that Jack Benton was a foreman. The Union's contention was that Jack Benton was a mechanic by the fact that while he did do some of his duties which were of a supervisory nature, that the majority of the duties performed by Jack Benton were that of a journeyman mechanic and he worked with the tools the majority of his time.

The Wells stood on their contention that he was a supervisory employee and did not belong in the Union. One discussion brought on another one and Joe Wells made the statement that Jack Benton was responsible for his employees belonging to the Union, that during the lunch hour he talked it to

(Testimony of T. E. McShane.)

all the employees, talked Union to the employees during the lunch hour and that Mr. Benton was a first class foreman, he did a good job for them and that his work was satisfactory in every way but he still felt that he was the one that was responsible for their employees being members of the Union and wishing to be represented by it.

Q. Was there anything in any of the conversations about Salt Lake City?

A. Mr. Wells stated at one time——

Q. (Interposing) Which Mr. Wells was this?

A. Mr. Joe Wells. [104]

Q. All right.

A. Mr. Joe Wells stated that before that they would submit to any of the conditions that we asked for that he would move his operation to Salt Lake City.

Q. Do you have any present recollection of anything else that occurred at this meeting?

A. At this time I can't recall anything further that transpired at that meeting.

Q. Now, Mr. McShane, I ask you as a Grand Lodge Representative of the International Association of Machinists, have you participated in the negotiation of bargaining agreements with companies other than Wells, Inc.?

A. I participate in the negotiating of agreements with companies through California, Nevada, and wherever we have any occasion to negotiate.

Q. Now, in any of the agreements that you have negotiated, has there been any case where employees

(Testimony of T. E. McShane.)

in the body shop were included in the unit with automotive machinists?

A. In many instances we include the employees of body shops.

Q. Can you name any specific instance?

A. We include the employees of body shops in the Wells operation at Las Vegas for one where they repaired their bodies and done all the work that needed to be done on them.

Trial Examiner Myers: Is that the Wells Cargo?

The Witness: That is the Wells Cargo, yes. We represent [105] and attempt to sign agreements for body workers every place that they work. I will say that some places we are not successful in getting agreements for them, but we do take them into membership and represent them and sign agreements for them.

Mr. Royster: I believe that is all.

Trial Examiner Myers: Any questions, Mr. Callister?

Mr. Callister: I have, sir.

Cross Examination

By Mr. Callister:

Q. Mr. McShane, I assume that during the past four years you have been actively engaged in representing the International Machinists in negotiations and various other matters pertaining to contracts, have you not?

A. Contracts and otherwise.

(Testimony of T. E. McShane.)

Q. That is right. You know about the War Labor Board, do you not, Mr. McShane?

A. About what?

Q. You are familiar with the duties of the War Labor Board, are you not?

A. Quite familiar with it.

Q. My point is, you know, do you not, Mr. McShane, that where you are negotiating a contract and arrived at a point of dispute in respect to terms and conditions, that you call a Conciliator in and he certifies the question in dispute to the War Labor Board. You are familiar with that procedure, [106] are you not?

A. That is correct.

Q. In other words, I assume you have had many cases during the past four years where you have bargained with various companies and have reached disputes and had them certified to the Board and I mean the War Labor Board, is that right?

A. I have.

Q. Now, Mr. McShane, coming back to this April meeting that you refer to with Mr. Wells, at Henderson, Nevada, you went there to have Mr. Wells sign an agreement on behalf of Wells Cargo, did you not? A. That is correct.

Q. Now, is it not true—incidentally as a part of that meeting you brought up or discussed his Reno operation, isn't that right?

A. That is correct.

Q. Now, Mr. McShane, have you ever or do know whether anyone has ever prepared an agree-

(Testimony of T. E. McShane.)

ment that has been presented to the Wells, Inc., which is another corporation from Wells Cargo, as you know, in respect to their Reno operation?

A. I do.

Q. Where is that agreement?

A. That agreement was given to the Wells brothers, Bob and Howard, in their office.

Q. Have you got a copy of it? [107]

A. We have some place a copy of it, yes.

Q. You mean to tell me you came here to a meeting of the hearing of this and did not bring a copy of it with you?

Trial Examiner Myers: Let us not argue.

Mr. Callister: I am sorry, Mr. Examiner.

The Witness: The agreement that was presented to the Wells brothers was a duplicate of that signed agreement and for negotiating purposes on our part we would use that.

Trial Examiner Myers: You are referring to Board's Exhibit 6?

The Witness: I believe it is 6; it is the agreement.

Trial Examiner Myers: Yes.

By Mr. Callister:

Q. Then, Mr. McShane, if I understand you correctly, you did not draw an agreement, but you presented to Wells, Inc., the Respondent here, that pertained solely to their Reno operation, is that correct?

A. May I answer that in the only way it can be answered?

(Testimony of T. E. McShane.)

Trial Examiner Myers: Certainly.

A. The two operations we considered identical from the standpoint of mechanics, so an unsigned copy of that which we had made several copies at the time that we presented this agreement, and it was signed, there were extra copies made up and one of those copies was the one that was presented to the Wells brothers here in Reno as the agreement that we wished to put into effect.

By Mr. Callister:

Q. Now, coming back to your April meeting now.

Mr. Royster: You mean May.

By Mr. Callister:

Q. In respect to this May meeting in Henderson, you stated here a few minutes ago you presented Mr. Wells with an agreement there, is that correct?

A. That is correct.

Q. As a matter of fact, is it not true, Mr. McShane, all you did to him was you signed Exhibit 6 here and you mean to tell me you presented another agreement in addition to Board's Exhibit 6?

A. You want me to tell you just exactly what happened.

Q. That is right.

A. We had three extra blank copies and they were taken out of the brief case and then we asked Joe at that time to start negotiating for the Reno operation on three blank copies that are identical to that.

Q. Well, now, Mr. McShane, this Board Exhibit

(Testimony of T. E. McShane.)

6, I note here there is nothing said about body mechanics. Did you ever present to them a wage scale for body mechanics?

A. They had——

Q. (Interposing) Did you or did you not?

A. The wage scale covering body mechanics is on the last paragraph of that and it was applied to them on this job.

Q. Well, Mr. McShane, did you at any time ever present to [109] the Wells, Inc., a job classification of body builders with a wage scale proposed?

A. We asked for the same wage scale that would be paid to the mechanic.

Q. Now, in this agreement which you say you presented to Howard and Bob Wells in December, I think it was in 1944, did that copy have anything to say about what may be termed body builders, do you recall?

A. That was an exact duplicate of this agreement.

Q. Nothing was said about body builders in there at all?

A. There was something said about body builders. We said we included the body builders in that classification as mechanics.

Trial Examiner Myers: What do you means, in writing? He is talking about orally.

Mr. Callister: I am trying to get that straight.

Trial Examiner Myers: You said "said."

By Mr. Callister:

Q. In respect to Board's Exhibit 6 did you at

any time in writing ever give to the Wells brothers a proposal for body builders?

A. We class a body builder as a mechanic and when we presented the classification of mechanics to Wells brothers that included body builders. That is what they are, they are mechanics.

Q. Well, now, Mr. McShane, was anything ever said at any [110] of these meetings in regard to greasers being included in the unit?

A. There was nothing never said about including greasers in the unit.

Q. Was anything ever said while you were present at any one of these meetings that the Union claimed they represented the greasers?

A. That the Machinists Union represented greasers?

Q. That is right.

A. The only instance where the Machinists would represent a greaser—now, you asked me a question, I have to answer it, you asked it in a way I can't answer it any other way—

Trial Examiner Myers: Read the question.

(Question read by the Reporter.)

A. (Continuing) Mr. Wells mentioned one time that they used an employee who greased trucks part of the time, worked as a mechanical helper part of the time and Mr. Wells was told that if he had an employee who put in over half of his per cent of his time at mechanical work that he would be represented by us.

By Mr. Callister:

Q. Mr. McShane, again I ask you the question,

(Testimony of T. E. McShane.)

you can say "Yes" or "No," was anything ever said by you or by any Union representative while in your presence that they represented the greasers in Wells at Reno?

A. I never made the statement. [111]

Q. Did you hear any Union representative make that statement?

Mr. Royster: Just a moment. I think that question of Mr. Callister should be limited to conversations where one of the Wells brothers was present.

Mr. Callister: I will waive the hearsay side. I am asking if Mr. McShane ever heard anything.

Trial Examiner Myers: By Union representatives to one of the representatives of the Respondent.

Mr. Callister: That is understood.

Mr. Royster: I am not sure the witness understood.

Trial Examiner Myers: We are talking about these meetings all the time.

Mr. Royster: That is right, I wanted to have that clear.

Trial Examiner Myers: When you said Mr. Wells, did you mean Joe Wells just now when you were talking about greasers when he told you about one greaser spending some time on a greasing job?

The Witness: I beleive it was Joe Wells. Anyway it was called to my attention that we did have one employee, I believe, that sometimes worked, did some greasing and then in addition to that he worked as a mechanic's helper.

(Testimony of T. E. McShane.)

By Mr. Callister:

Q. Mr. McShane, I will ask the question again. I do want an answer. I think it is material, [112]
Mr. Examiner.

If you do not understand it, Mr. McShane, you tell me. Did you ever hear a representative of your organization while in your presence at these meetings ever say that they claimed the greasers in this unit? A. No.

Q. Now, Mr. McShane, do you know how it came about that your organization represented to the National Labor Relations Board representatives that you did represent the greasers in this unit? Do you know how that came about?

Mr. Royster: I object to the form of the question.

Trial Examiner Myers: I will sustain the objection.

By Mr. Callister:

Q. Now, Mr. McShane, as I recall, you testified that you advised Mr. Wells on May 16th that you represented a majority of his employees in Reno?

A. That is correct.

Q. Did you have signed authorizations with you at that time as Mr. Anderson so testified here this morning?

A. Do I have to answer a question that I don't think anybody testified to? I never heard anybody testify to him that they did have signed authorizations.

(Testimony of T. E. McShane.)

Trial Examiner Myers: I think you had better reframe your question, Mr. Callister.

Mr. Callister: All right.

By Mr. Callister:

Q. Did you have signed authorizations [113] at that time?

A. We had the membership.

Q. Mr. McShane, please answer my question. I think it is plain. Did you have signed authorizations at that time in May when you had this conversation with Mr. Wells?

A. We did not have an authorization as you see them there, no.

Trial Examiner Myers: You are referring to Board's Exhibit 2 when you point there?

The Witness: We did not have authorizations such as these at that time.

Mr. Royster: Let the record show the witness is holding in his hand Board's Exhibit 2(a) through (k).

By Mr. Callister:

Q. What did you have at that time, Mr. McShane, that advised you that you represented the majority?—

A. We had membership, and in signing an application into the Machinists Union the same rights of representation is stated on the heading of the application as you see on this authorization when they sign an application for membership they sign an authorization also. Part of it is an authorization.

(Testimony of T. E. McShane.)

Q. You had those with you at that time?

A. Those were in the records here.

Q. Records where?

A. I didn't understand.

Q. Where were these records? [114]

A. These records were in the Union office here at Reno.

Q. I see. In other words, there are other additional records showing authorization other than what is set forth, as I understand it, in Board's Exhibit 2, is that right?

Trial Examiner Myers: Maybe I could explain what the witness means. Some of the application blanks, application blanks of some Unions, contain a designation as well as an application for membership.

Mr. Callister: I understand.

Trial Examiner Myers: Is that what you mean?

The Witness: That is right.

Trial Examiner Myers: Where you designate the Union as your bargaining agent?

The Witness: When you sign that application you are not only making application but designating them as your bargaining agent.

By Mr. Callister:

Q. You had these on May 16, 1944?

A. We had a majority.

Q. Would you have any objections to letting us see those, Mr. McShane?

A. I do not have them.

Q. Could you obtain them?

(Testimony of T. E. McShane.)

A. I will ask the Board's attorney if I should do that.

Mr. Royster: Well, certainly you should do that, if they are available, if you know where you can obtain them. [115]

By Mr. Callister:

Q. Will you get those for me, Mr. McShane?

A. Do you want them right now?

Q. When it is convenient. This hearing will be on tomorrow. Let me see them, will you?

I refer you to Board's Exhibit 5 and I quote from it. The letter is dated August 8, 1944. You state there:

"We will submit proof of this representation at the first meeting with you."

You stated that, did you not?

A. That is correct.

Q. Well, now, Mr. McShane, as I understood you a few minutes ago, on May 16, 1944, which would be about four months prior to August 8th, you stated that Mr. Joe Wells and you had entered into negotiations and had agreed upon everything except wages and mechanic Diesel job classifications, is that right? A. That is correct.

Q. But notwithstanding he had agreed to everything you were going to submit proof of representation after August 8th, is that right?

A. That is correct.

Q. Now, Mr. McShane, you knew, did you not, in the month of May of 1944, as well as you know now, that if an employer had agreed to certain

(Testimony of T. E. McShane.)

provisions and there is dispute as to [116] others that they can be certified to the War Labor Board and the employers compelled to sign it and enter into it, isn't that right?

Mr. Royster: I object to that as calling for a conclusion.

Trial Examiner Myers: I will sustain the objection.

The Witness: I wish you would let me answer that.

By Mr. Callister:

Q. Is it not true, Mr. McShane, that continually during all these negotiations as you term them, and we will term them meetings, that a question had always arisen and was discussed at each one of these meetings the fact of representation, was it not?

A. The only time that, the first time that Joe Wells raised the question of representation and objected to negotiation on the ground of them was on December 22nd.

Q. Well, then, why, Mr. McShane, did you tell him on August 8th you would submit proof of representation?

A. Because we had it and we merely stated that so that there wouldn't be any reason for him to raise the question of jurisdiction because I had been informed in a round-about way that the Wells brothers who were here were going to raise the point of non-representation by the Union. That is the reason we secured these cards.

Q. Now, as I understand it, Mr. McShane, you

(Testimony of T. E. McShane.)

secured applications with this authorization on May 16th and then subsequently [117] secured these authorizations of Board's Exhibit 2?

A. You are asking me a question that doesn't exist. I did not say that we got authorizations or anything on May 16th.

Q. I did not say that, Mr. McShane, I am sorry. I said in addition to getting applications on May 16th, you subsequently got authorizations as was shown by Board's Exhibit 2, is that right?

Trial Examiner Myers: Do you know what the word "subsequent" means?

The Witness: I know what the word "subsequent" means.

Yes, but his question I don't know how to answer it. I don't know what he is trying to find out. His question is not clear to me.

Trial Examiner Myers: Will you reframe it?

Mr. Callister: I will be glad to reframe it.

By Mr. Callister:

Q. Mr. McShane, can you tell me why, if you had a majority of the employees on May 16th by virtue of some sort of a document, why you went to the trouble of getting additional authorizations which is shown by Board's Exhibit 2?

A. I will tell you. The reason that we found it necessary to do that, in the interim of time between May 16th and the time we got those, we had found out that the Wells brothers, we were having quite a bit of trouble getting them to live up to the terms of the agreement we already signed with them. [118]

(Testimony of T. E. McShane.)

Q. What agreement is that?

A. The one covering the Wells Cargo and they acted in a manner that we decided that we had better get the information which would be required by the National Labor Relations Board in the event that Wells brothers started backing up, which they had shown indications of doing by their actions of the way they were conducting the job on a signed agreement contrary to the terms of the agreement.

Trial Examiner Myers: We will take a short recess.

(Short recess).

By Mr. Callister:

Q. Mr. McShane, when you had this meeting in Reno during the month of December, you had Mr. Curtin with you, you say?

A. That is correct.

Q. Did you explain to Mr. Curtin at that time that you had agreed on everything except wages and the job classifications of body builders?

Mr. Royster: Objection to on materiality.

Trial Examiner Myers: Overruled.

By Mr. Callister:

Q. Did you do that?

A. Did I explain to Mr. Curtin?

Q. Yes.

A. I think that from the conversation between Mr. Wells and I that he could draw those conclusions.

(Testimony of T. E. McShane.)

Q. You never told him that? [119]

A. No, I told him that we had tentatively agreed on some of the provisions of the agreement.

Q. Did he at that time write them down, or do anything about it?

A. I do not know. I think he kept a record of the meeting. I do not know.

Q. Now, did Mr. Curtain, as Commissioner of the Conciliation of Labor, when you told him that you had agreed upon certain provisions, do nothing at all about it, you say?

A. I think my statement is in the testimony a while ago.

Q. Just forget what you said before.

A. That Mr. Curtain had suggested that Wells go ahead and negotiate.

Q. You do not get my point apparently, Mr. McShane.

What I want to know is, after you stated something was said in this meeting showing that you had got together on certain provisions, as you claim, did Mr. Curtain of the Conciliation Division, do anything about it such as to say "Well, now, let's sit down and set forth those things we have agreed on and set forth those things in disagreement." Did he do that?

A. No.

Q. Just tell me what Mr. Curtain did at this meeting in December, 1944?

Mr. Royster: I object to what he did as immaterial to [120] the issues in this case.

(Testimony of T. E. McShane.)

Trial Examiner Myers: Overruled.

A. Mr. Curtin appeared there, and it was very evident to me, whether it was to Mr. Curtin or not,——

By Mr. Callister:

Q. Mr. McShane,——

Trial Examiner Myers: Let him answer it his own way. Go ahead, Mr. Witness.

A. (Continuing) It was evident to me which I had known for sometime——

Trial Examiner Myers: Tell us what he said and did, Mr. McShane. Forget what was evident.

The Witness: What Curtin said and did?

Mr. Wells and I done most of the talking. Curtin, when Mr. Wells finally decided that we did represent the people and that he would continue negotiating after we first went in, why he strenuously objected to a Union shop or any overtime provisions and the wage scale.

By Mr. Callister:

Q. Mr. McShane, please tell us——

Trial Examiner Myers: Tell us what Curtin did. Did he sit down or stand up or say hello, or what. Just Curtin, nobody else.

The Witness: All right. Curtin tried to get Wells to negotiate and Wells decided that he would, and then after he went out and talked to the employees, he decided not to.

Trial Examiner Myers: Never mind what Wells did. What did Mr. Curtin do? [121]

The Witness: Mr. Curtin told Wells that their

(Testimony of T. E. McShane.)

actions were unusual and that he didn't understand them, and I believe that he told them that if they demanded an election and the Union would agree to it that that is what it would be.

Q. (By Mr. Callister) Did Mr. Curtin say anything else at that meeting in respect to representation?

A. I was instructed once to not say anything about what Mr. Curtin said, only in the presence of Wells.

Trial Examiner Myers: Nobody instructed that.

Go ahead. Did Mr. Curtin say anything at this meeting about this question of representation? Is that the question?

Mr. Callister: That is correct.

The Witness: Mr. Curtin asked me when Wells demanded an election held what was our position in regard to that matter and I told him that we were agreeable to an election.

Q. (By Mr. Callister) You said you were agreeable?

A. That is right, I told him we were agreeable to an election at that time.

Q. Mr. Wells said that he was agreeable to an election?

A. Mr. Wells is the man that demanded the election be held.

Q. You said you were agreeable to it?

A. That's right.

Q. What happened with respect to the election, why wasn't one held? [122]

(Testimony of T. E. McShane.)

Mr. Royster: If you know.

A. You are asking me if I know why an election wasn't held?

Q. (By Mr. Callister) Yes.

A. I do not know.

Q. Did you give to the Conciliator, Mr. Curtin, a copy of the proposal which you submitted to Mr. Wells, as you claim?

Trial Examiner Myers: He means the proposed contract.

A. I did not give to Mr. Curtin the proposal of the agreement.

Q. (By Mr. Callister) Didn't Mr. Curtin as Conciliator ask you for those terms, conditions you claimed you had agreed upon?

Mr. Royster: I renew my objection to this line of testimony.

Trial Examiner Myers: You mean this meeting?

Mr. Callister: Yes, or any time.

Trial Examiner Myers: Confine it to the meeting?

Mr. Callister: We all know the procedure of the Conciliation Service. I think it goes to the credibility of the witness.

Trial Examiner Myers: Overruled. What transpired at the meeting is all right, but what he took up or did not take up with the Conciliator, I am not interested in.

Do you want what transpired between this witness and the conciliator at the meeting?

(Testimony of T. E. McShane.)

Mr. Callister: I assume he told us all. [123]

Q. (By Mr. Callister) Isn't that correct, you stated all that took place between you and the Conciliator at the meeting?

A. There was possibly some other talk that I don't recall word for word.

Mr. Callister: That is all.

Trial Examiner Myers: Any questions, Mr. Apperson?

Mr. Apperson: No.

Trial Examiner Myers: And redirect?

Mr. Royster: No further questions.

Trial Examiner Myers: You are excused, Mr. McShane. Thank you very much.

(Witnessed excused.)

Trial Examiner Myers: Will you call your next witness, Mr. Royster?

Mr. Royster: Mr. Examiner, at this point I would like to receive the permission of the Examiner to substitute for Board's Exhibit 2(a) through (k) copies.

Mr. Callister: We have no objection.

Trial Examiner Myers: There being no objection you may substitute copies in lieu of the original.

Mr. Royster: Also, Mr. Examiner, during our recess I telephoned Wells, Inc. shop and asked that C. H. McBride come up here to testify. I talked to Mr. McBride and he said he would manage to get up here in about half an hour. I

intend to put Mr. Benton on now and would like to break into [124] his testimony when Mr. McBride arrives.

Trial Examiner Myers: Very well. Is Mr. McBride working?

Mr. Royster: He is working.

Trial Examiner Myers: Very well.

Mr. Benton, take the stand, please.

JACK BENTON

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Royster) Are you the same Jack Benton who previously has testified in this case?

A. I am.

Q. Mr. Benton, what was your job classification when first you were employed by Wells, Inc.?

A. Well, I was mechanic, but I was hired by Mr. Joe Wells in Las Vegas to start out the night shift, and I was going to be the night mechanic.

Q. Where? A. Reno.

Q. What was your salary?

A. Well, I worked days.

Q. When you started?

A. \$250 I think.

Q. And you testified that you were a foreman. When were you [125] promoted to foreman?

A. I think it was April 15, 1943—'42 I guess.

Q. I believe that you testified that you entered

(Testimony of Jack Benton.)

upon your employment there in August, 1942?

A. August 17, 1942.

Q. And you were promoted foreman when?

A. That following April.

Q. April '43? A. Yes.

Q. By whom were you promoted?

A. By Mr. O. A. Richer, shop superintendent. At that time he was shop foreman, so I guess he was shop foreman at the time he promoted me, because he got a promotion.

Q. What change, if any, was there in your duties after your promotion?

A. To foreman?

Q. Yes.

A. Full responsibility of trucks and repair work in the shop at Reno.

Q. Did you direct the efforts of the other employees in the shop?

A. Every man that worked in the shop.

Q. Now, in April, 1943, when you were first elevated to the foremanship, did Wells, Inc. have body workers, body builders? [126]

A. No.

Q. They did subsequently establish a body shop, did they?

A. At a later date, I don't remember.

Q. At any time did you supervise the work of the employees in the body shop?

A. For temporary period, yes, sir.

Q. After you became foreman did you receive overtime pay? A. No, sir.

(Testimony of Jack Benton.)

Q. Did you work any overtime?

A. About nine months as a foreman I think I worked 560 some hours overtime.

Q. Did you do any work as a mechanic during the time you were foreman?

A. All the time. I had the best set of tools they hand and worked with them always, always had my tools open.

Mr. Callister: You are not claiming he was part of the unit, are you?

Mr. Royster: No, I just wanted to get a description of his duties.

Mr. Callister: You will stipulate he was not part of the unit?

Mr. Royster: That is right.

Mr. Callister: Because of the fact he was a foreman with the right to hire and fire?

Mr. Royster: He had authority to hire and fire, no [127] question about that.

Q. (By Mr. Royster) What salary increases did you receive during the entire period of your employment by Wells?

A. Started at \$325.

Q. The entire period of your employment from the time you went to work in 1942, you testified your salary was \$250 a month.

A. We were taken off a salary and put on by the hour. Everybody was, and then we worked, I went on nights at \$1.37½ an hour because it was night man.

(Testimony of Jack Benton.)

Q. That was before you were foreman?

A. Yes, sir.

Q. When you were made foreman did you receive a salary increase? A. Yes, sir.

Q. To what amount? A. \$325.

Q. A month?

Trial Examiner Myers: \$325 a month you received as salary?

The Witness: Yes, sir.

Q. (By Mr. Royster) Did your salary remain \$325 a month?

A. For a period of six to eight months. Then I got a raise of \$25.

Q. Making your salary \$350? [128]

A. \$350.

Q. When did you say you were made foreman?

A. I was made foreman the 16th day of April.

Q. What year? A. 1943.

Q. After your salary was increased to \$350 a month, did you receive a further increase?

A. Yes.

Q. When did you receive it?

A. January 1st, 1945.

Q. How much increase? A. \$25.

Q. A month? A. Yes, sir.

Trial Examiner Myers: That brought your salary up to \$375 a month?

The Witness: Yes, sir.

Trial Examiner Myers: That was the first of January this year?

The Witness: Yes, sir.

Q. (By Mr. Royster) Are you a member of the

(Testimony of Jack Benton.)

International Association of Machinists?

A. I am.

Q. When did you join?

A. Initiated in October, 1942, I guess. [129]

Q. Where were you employed at the time you joined the Union? A. Wells, Inc.

Q. Was that prior to your elevation to the foremanship, that was before you were made foreman? A. That was nights.

Trial Examiner Myers: You say sometime in October, 1942?

The Witness: I was initiated in October, 1942.

Q. (By Mr. Royster) Do you hold any office in the Union? A. I do, yes, sir.

Q. What office is it?

A. Trustee and steward of the shop.

Q. Where?

A. Steward of the shop when I was at Wells.

Q. What were your duties as shop steward?

A. Well, shop steward, do you want the duties of a shop steward?

Q. What you did as shop steward?

A. I couldn't do anything; we had no working agreement with Wells, Inc. Shop steward is to take up——

Trial Examiner Myers: We know what a shop steward is, but we want to know what you did.

The Witness: Nothing.

Q. (By Mr. Royster) Did you talk to employees at the Wells shop about the Union? [130]

A. Well, we all talked a little bit of Union, the

(Testimony of Jack Benton.)

whole bunch, all the mechanics at that time belonged to the Union. The only time the Union was discussed, and our wages were——

Mr. Callister: (Interposing) I move to strike “all the employees at that time belonged” as indefinite, immaterial, incompetent and irrelevant, and not the best evidence.

Trial Examiner Myers: Strike out the whole answer. Read the question.

(Question read by the Reporter.)

A. (Continuing) No more than anybody else.

Trial Examiner Myers: Did you, yes or no.

The Witness: No.

Trial Examiner Myers: You did not say a word about the Union to anybody?

The Witness: We all belonged to it.

Trial Examiner Myers: Did you ever talk about the Union to any of the employees?

The Witness: Yes.

By Mr. Royster:

Q. What did you say to them?

A. Say to who?

Q. To the employees in the shop when you were talking about the Union?

A. Well, I didn't have to say much of anything.

Q. But what did you say to them?

A. We were all in favor of our Union for a written agreement [131] and more money, my men were dissatisfied and wanted to quit. They worked

(Testimony of Jack Benton.)

overtime, long hours and I was getting always talk from the men why couldn't they do this, why couldn't they do that, we got a Union.

Q. Did you tell any of the employees in the shop they had to join the Union to hold their jobs?

A. No, sir.

Q. Did you promise them any preferred treatment if they joined the Union? A. No.

Q. Did you secure the signature of any employee in Wells shop to a Union authorization?

A. I don't think so, no, sir.

Trial Examiner Myers: What is it, no, sir?

The Witness: No, sir.

By Mr. Royster:

Q. Did Bob Wells ever mention the Union in your presence—May I withdraw this witness for a moment? Mr. McBride is here now.

Trial Examiner Myers: Any objection?

Mr. Callister: No. As a matter of fact, I think it would be all right if he wants to finish with this gentleman. We will be glad to excuse Mr. McBride at the shop if he wants him in chronological order.

Mr. Royster: I don't want this man to lose any pay.

Mr. Callister: We will assure you he won't lose any pay. [132]

Mr. Royster: Do you want to wait here a while?

Mr. McBride: I'd rather get back to work.

Mr. Royster: Very well.

(Witness temporarily withdrawn.)

C. H. McBRIDE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: C. H. McBride.

Trial Examiner Myers: Please spell your last name for the record.

The Witness: Mc B-r-i-d-e.

Trial Examiner Myers: Where do you live?

The Witness: 728 Quincy.

Trial Examiner Myers: Reno?

The Witness: Reno.

Trial Examiner Myers: You may be seated and you may proceed, Mr. Royster.

By Mr. Royster:

Q. What is your employment, Mr. McBride?

A. Mechanic for Wells Company.

Q. Here in Reno?

A. Here in Reno, yes.

Q. How long have you been employed by Wells? [133]

A. Be a year next month.

Q. What was your job classification on June 3, 1944?

A. Didn't work for Wells then; worked for Wagner Tank:

Q. Just a moment, June, 1944——

Trial Examiner Myers: When did you start with Wells?

(Testimony of C. H. McBride.)

The Witness: I filled in my blank the seventh day of September, 1944, for Wells, and went to work on the 8th.

Q. (By Mr. Royster) Has your job classification changed since you went to work for Wells?

A. Not that I know of.

Q. It has been a mechanic right along?

A. Yes.

Q. Have you ever designated the Union, that is, the International Association of Machinists or Local 801 of that organization to represent you in matters of collective bargaining?

A. Well, one time right after I went to work for them there was somebody, I don't know who it was now, I can't remember, I was new on the job, came with a petition to be signed and I read the petition over and it was some mechanics union in Reno, I forget the number of it. Then I handed it back to Harold Wilson or Cassinella, my foreman. They signed it first and I signed under them, but I wouldn't sign until they did to make sure it was the right one.

About three days later Harold Wilson told me it was the [134] wrong one that we signed, it was some other Union we were supposed to sign. I don't know nothing about it, that is all I know, but I never did see or hear of the Union Harold Wilson said we were supposed to sign.

Q. Just a minute. I show you Board's Exhibit 2(g), and have you ever seen such a designation as that?

(Testimony of C. H. McBride.)

A. No, the one I signed we all signed on the same sheet.

Q. You did not sign a slip such as that?

A. No, I don't hardly think so. I only signed one sheet and it was all on the same paper.

Q. When did you say you signed this paper?

A. I don't know the date, all three signed the same date.

Q. Correct me if I misinterpret your testimony, did you say shortly after you went to work for Wells?

A. Yes, shortly afterwards, but I remember it was all on one paper.

Q. What did you think you were signing when you signed that?

A. I knew what I was signing.

Q. What was it?

A. It was a Union agreement with this Union to have a closed shop. It was no contract, nothing like that, but I didn't know what Union they belonged to, the shop's mechanics.

Q. Do you know now what Union you were designating by signing that paper?

A. I don't remember now, no. I read it, I read the number of [135] the Union and everything on it, but nobody said anything to me, see, I was new on the job. I figured they had it all figured out before I got there, but I guess they were all mixed up.

Mr. Royster: No further questions.

Trial Examiner Myers: Any questions, Mr. Callister?

Cross-Examination

Q. (By Mr. Callister) You say it was a petition given to you to be signed?

A. Yes, sir.

Q. Do you know who handed it to you, is he present here?

A. I couldn't tell you at all.

Mr. Callister: I will ask the Board's attorney if they have any objection to that petition to letting the respondent's attorney see it.

Mr. Royster: I have no objection to it.

Q. (By Mr. Callister) I will ask you this: Did any employee at Wells Transportation Company go with the Union men around to have this signed, or was the Union man alone?

A. I couldn't answer that either.

Q. You do not remember?

A. No, I don't remember a thing about that.

Q. You say this was the month of December, 1944, this took place?

A. September I went to work and it was afterwards, not [136] very long afterwards that the petition came around and I went to work in September. I am pretty sure it was September the 8th.

Q. That you went to work?

A. For Wells.

Q. This petition was sometime later?

A. Sometime later, yes.

Mr. Callister: Does Board's attorney have any objection to having this made an exhibit? I know this belongs to the Union. I would like to request, I think the Board should have that as an exhibit.

(Testimony of C. H. McBride.)

Mr. Royster: I am perfectly willing to put it in on your request.

Mr. Callister: For the purpose of course, this is the document he signed?

Mr. Royster: Yes, I talked to Mr. McBride over the telephone, and frankly I thought he signed one of the small slips and I thought I was going to have him testify to that. But he is on the petition.

Mr. Callister: Let me hold this back and we will make a decision on it later.

Mr. Royster: I think I will ask him if he can recognize his signature.

Redirect Examination

Q. (By Mr. Royster) Would you recognize your signature on this [137] petition, Mr. McBride, if it were shown to you? A. Yes.

Q. Will you take a look at this? Do you see your signature on that?

A. It is right down here.

Q. Can you tell us now what Union, if any, by your signature you designated to represent you in matters of collective bargaining?

A. Only what is on the head of the letter here.

Q. Was that on the head of the letter when your signature was appended on there?

A. Well, it says here Local 801, A. F. of L.

Q. Was that on there when you put your signature on the document?

A. Must have been, it's all on the same paper.

Q. Do you recall that it said that you would

(Testimony of C. H. McBride.)

thereby authorize the International Association of Machinists, Local 801, to act as your bargaining agent?

A. I couldn't say the number was right.

Q. Was it International Association of Machinists?

A. It was Machinists I know that.

Recross Examination

Q. (By Mr. Callister) Mr. McBride, as I understood your testimony, after you signed this petition Mr. Wilson, a fellow employee, advised you you signed the wrong petition? [138]

A. That is told us two or three days later, we signed the wrong petition. He said it was another Union he was thinking about, but I thought he had it all figured out.

Q. In other words, you signed this apparently on Mr. Wilson's representation?

A. I made them sign it first.

Q. You signed it because Mr. Casinella and Mr. Wilson signed it?

A. I knew I would have to be in the same Union as the rest of them or I wouldn't work.

Q. After you did that, Mr. Wilson advised you they were wrong and made a mistake, is that right?

A. That is right.

Redirect Examination

Q. (By Mr. Royster) Did anyone at Wells, Inc. tell you that you had to join in any particular Union in order to work there?

A. No, that was never said to me.

Q. Was there any inducement made to you to sign this petition? A. No.

Q. Any promises?

A. No, just asked me if I would.

Recross Examination

Q. (By Mr. Callister) Who asked you, this Union man or any employee? [139]

A. It was a Union man, whoever brought it around, the one who asked me. I can't remember.

Trial Examiner Myers: You do not know whether he was an employee or not?

The Witness: I would have known at the time, but I can't remember who brought that in.

Trial Examiner Myers: Any other questions?

You are excused, Mr. McBride. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Mr. Benton, will you take the stand, please?

JACK BENTON

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Royster: I believe, Mr. Examiner, that I had propounded a question to Mr. Benton and Mr. McBride came in. I would like to have that question stricken.

Trial Examiner Myers: All right.

By Mr. Royster:

Q. Did Bob Wells ever mention Union in your presence?

A. We had quite a discussion of Union one day.

Mr. Callister: Just one moment, I object to it on the ground——

Trial Examiner Myers: Say "Yes" or "No," and let us go ahead. [140]

By Mr. Royster:

Q. When did the mention of the Union take place?

Mr. Callister: I want to make my objection on the ground that it is immaterial, incompetent, irrelevant, confidential between a supervisory employee and the officer of the company.

Trial Examiner Myers: Overruled.

Naturally he couldn't be 8(1), cannot be a violation of 8(1).

By Mr. Royster:

Q. When did this conversation take place?

A. I would say there was no date to remember, it was just a conversation at the store one day.

Trial Examiner Myers: What year was it in?

The Witness: '44.

By Mr. Royster:

Q. This past year?

A. Yes, sir.

Q. About what month in the year?

A. I would say somewhere along September or October.

Q. September or October, 1944?

(Testimony of Jack Benton.)

A. Yes.

Q. Where did this conversation take place?

A. In the shop.

Q. In the Wells shop at Reno? A. Yes.

Q. Who was present besides you and Bob Wells? [141]

A. I don't know, the bunch eating dinner, Blackie Ellis.

Q. By Blackie Ellis do you mean Oran Ellis?

A. Oran Ellis.

Q. Who else?

A. The day crew, Melvin Jakomiet.

Q. What time of day was this?

A. Noon, it was lunch.

Q. Were you in a group? A. Yes.

Q. Was the conversation or the remarks which Bob Wells made at that time audible to everyone in the group?

A. I suppose it was, yes.

Q. You were there and you heard him speak, you know how the men were situated.

A. Yes.

Q. Would you say that everyone could have heard what he said?

A. Yes, if they wanted to they could have.

Q. What did Bob Wells say?

A. Well, we were talking of Unions and he said Unions were lousy, Unions would keep a good man down and promote a sorry man, and we argued quite a bit there about it, just it wasn't no heated argument, it was one of our friendly arguments.

(Testimony of Jack Benton.)

We got into them several times about different things, and he said that where a good man would be held down by a Union [142] they would uphold a sorry man. Any time a company that was working men couldn't fire a man without being told by the Union what to do, why it was a hell of a place to work. That is just about the subject of the Union that went on.

Q. Did you make any remarks?

A. Well, sure, I stuck up for the Union.

Q. What did you say?

A. Well, I told him that I thought a Union was a good thing if it was lived up to. There were good things in it and bad things the same as any other organization.

Q. Were you at that time a member of the International Association of Machinists?

A. Yes, sir.

Q. Did anyone in authority over you at Wells, Inc. ever instruct you in any respect concerning conversations about the Union? A. No.

Q. Did you wear a Union button?

A. Yes, sir, I wore one I would say about 65 per cent of the time until we forgot to take them off.

Trial Examiner Myers: Never mind what we did.

The Witness: I did.

Q. (By Mr. Royster) Did anyone ever remark to you——

(Testimony of Jack Benton.)

Trial Examiner Myers: Where did you wear the button?

The Witness: On my coveralls. [143]

Trial Examiner Myers: While you were at work?

The Witness: Yes, sir.

Q. (By Mr. Royster) Was it covered up by anything? A. No.

Q. Did anyone ever remark to you about your Union button?

A. Bob Wells did. He said one time, he said——

Q. (Interposing) Your answer is, yes, someone did remark? A. Yes.

Q. Who made that remark?

A. Bob Wells.

Q. When did he make it?

A. In the office of Wells, Inc.

Q. When?

A. I think it was along in December.

Q. What year? A. 1944.

Q. Was anyone present within hearing?

A. No, I would say they were, but probably they never paid no attention.

Q. What did he say?

A. He asked me what that yellow thing was on my sweater. He said, "Did a bird fly over you?" I said, "No, it's a Union button, the men wear them."

Q. Did he make any further remark than that?

A. No. [144]

(Testimony of Jack Benton.)

Q. Do you know George McKay?

A. Sir?

Q. Do you know George McKay?

A. Yes, sir.

Q. Do you know if he visited Wells shop about the first of December, 1944? A. I do.

Q. What time of day did he come?

A. We were just getting ready for noon, twelve o'clock.

Q. Your lunch hour is from——

A. (Interposing) Twelve to one.

Q. Were the men working?

A. Just stopped working.

Q. Did McKay have a conversation with anyone in your hearing?

A. He had one with Bob Wells.

Q. You heard that conversation?

A. Part of it.

Q. What did you hear?

A. Told him not to come in there and bother his men, he didn't want them bothered. McKay said he was in there to collect dues and he said, "Well, I don't want you in this shop. You get out and stay out."

Q. Did you join in that conversation?

A. I did.

Q. What did you say? [145]

A. I told Bob, I said, "We are not working. He come in here to collect dues from the boys." I said, "I don't see why he can't come in here any time he wants to to collect dues. The Teamster boss

(Testimony of Jack Benton.)

comes in any time he wants to and talks for a long period of time."

Q. Well, now, that is what you told Bob Wells. Did you, during the period of your employment there observe a representative of any other labor organization come in the shop and talk to the men? A. Oh, yes.

Q. Who?

A. The Teamster, Mr. Anderson, and the other man with him, I don't know who he is.

Q. How frequent were their visits would you say?

A. They have been in there when I was foreman and talked to Reisbeck 30 or 45 minutes at a time, sit over on the bench and talk.

Q. Do you know whether or not they were ever asked to keep out of the premises by Mr. Wells?

A. I do not.

Trial Examiner Myers: Do you know whether or not Mr. Bob Wells ever saw Mr. Anderson there?

The Witness: I think so. They used to come into the office into the shop.

Trial Examiner Myers: Was Mr. Bob Wells always in the [146] office?

The Witness: Always around there pretty close. There was never no objections to him in there.

By Mr. Royster:

Q. Do you know H. B. Divine?

A. Yes, sir.

Q. Who is he?

(Testimony of Jack Benton.)

A. Shop Superintendent I guess of Wells, Inc.

Q. Here at Reno? A. Yes, sir.

Q. Do you know when he came to work for Wells at Reno?

A. Oh, came up here sometime in December, around in about the first of December, I think, I wouldn't be sure.

Q. Of what year? A. '44.

Q. Was he in a position of authority over you?

A. Yes, sir, my superior.

Q. Did you have a conversation with Joe Wells and H. B. Divine shortly after Mr. Divine came up here to work?

A. I was called in the office, I don't know by who, one of the boys, I think, and there was Mr. Howard Wells, Mr. Divine, Mr. Frank Wells, the father, and Joe present, and I was called in and they told me at the time that there was no need of going out and telling each man in the shop that Mr. Divine was going to take Mr. Richer's place, and that I being the foreman he called me in and told me that I was to tell my [147] own men that there would be no changes made, I would continue shop foreman, Mr. Divine would be in place of Mr. Richer, and to go on and do their work as they had done before, and everything was all right.

Q. Was anything said to Mr. Divine in your presence about you?

A. I think Howard Wells, Mr. Howard Wells here, we had quite a conversation among ourselves about different things, but he told Mr. Divine that

(Testimony of Jack Benton.)

—he says, “Well, Bob and Jack have had words over trucks. They had come in here and maybe one would service and Bob needed it for a trip and he would take it and Jack would find out about it and bellyache about it and Jack would do Bob the same way,” and he said, “I will say that Jack has co-operated with Bob 100 per cent,” and that’s the words Mr. Howard Wells spoke to that group.

Q. Did you have a conversation with Mr. Divine about your status as foreman?

A. Yes, sir.

Q. About when did that conversation take place?

A. Oh, it was around maybe the latter part of December or the first of January.

Q. That is, December 1944 and January 1945?

A. Yes, sir.

Q. Where did the conversation take place? [148]

A. In the shop.

Q. What was said?

A. Well, I told him (Divine) that I would like to talk to him about the foreman job. I said, “There’s mechanics getting \$350 a month and I am getting \$375 a month, and I am on call 24 hours a day. I take the dirtiest part of the road work on the mountain, I never put the dirty one off and take the good ones.” And I said, “I wonder if you get me a little more money. There is not enough difference between the mechanics and myself. I come down here and get held up and work overtime and they work 8 hours a day, six days a week, for \$350, and I work 6 days a week and overtime

(Testimony of Jack Benton.)

and I just get \$25 more than they do and I wondered if I could get some more money." If that wasn't satisfactory, I wondered if he could get another foreman and give me a job back as a mechanic. In fact, we talked about just indirectly of me going back to night shift. We were having quite a little bit of trouble and fellows, we didn't have the qualified men, and he said, "Well, I will see what I can do." And he said, "I think everything can be arranged and don't worry." And that is the last that I heard of it until January 31st.

Q. What did you hear January 31st?

A. January 31st I just got through calling up a grease man. he greased a truck and left about half the fittings ungreased and I was correcting this grease man to go back and grease those trucks, he had plenty of time, we weren't [149] rushing him, I wanted them greased. Mr. Divine called me over to one side and I walked over, and he said to me, he said, "Well, Jack, I guess you will be relieved of your shop foreman duties." And I said, "Why, that is just fine." I said, "It wasn't worth it anyway. The mechanic job is the best." And I said, "What shift do you want me to work?" And he said, "Well, I don't think it would work out, Jack, if I put you on another shift as a mechanic. I have worked in shops and I have run men and I have seen it tried and it hasn't worked." And he said, "I don't think it would work out."

(Testimony of Jack Benton.)

I says, "Well, I worked for Mr. Richer and I think I can work for you." And he said, "Well, I don't think it would." And I said, "In other words, you mean that I am fired?" And he said, "If you look at it that way, yes." And I said, "Thank you." That is all there was.

Q. Since January 31, 1945, have you worked for Wells? A. No.

Trial Examiner Myers: Did you leave the plant right after?

The Witness: It was five minutes to six when I got notified of my discharge.

Trial Examiner Myers: You cleaned up and left?

The Witness: I came back the next day after my tools and I didn't get my discharge slip, I don't think, and my [150] checks until the 6th or 7th of February, and when I got my check I found that I was practically fired on the 29th of January, my birthday, and it was stamped on the check and I had been off on my birthday to a dinner party and asked Mr. Divine if I could have the day off to go to Fernley and have dinner with some people because my wife's birthday was the 5th and mine the 29th, and he said, "Yes." I went over there for my birthday and when I got back I suppose I'd have got fired the 30th, but Mr. Divine wasn't on the job the 30th. The 31st he was on the job. He didn't tell me until five minutes of quitting time, no notice at all.

Q. (By Mr. Royster) Now, Mr. Benton, as

(Testimony of Jack Benton.)

shop steward for the Union at Wells in Reno, was it your responsibility to know which of the employees were and which were not members of the Union? A. Yes, sir.

Q. Now, I show you Board's Exhibit 3 and glancing at the list of Reno shop employees on the payroll, period ending May 15, 1944, will you tell me which of them, if any were members of the Union at that time?

Mr. Callister: We object on the grounds that it is immaterial, incompetent and irrelevant.

Trial Examiner Myers: I will sustain the objection.

The Witness: O. A. Richer—

Mr. Royster: The objection was sustained. [151]

By Mr. Royster:

Q. Will you tell us which of the employees, if any, on that payroll had confided to you as shop steward their desire to have the Union represent them?

Mr. Callister: Just a minute, same objection.

Trial Examiner Myers: I will sustain the objection.

Mr. Royster: No further questions.

Cross Examination

By Mr. Callister:

Q. Mr. Benton, I assume that in your position as shop foreman, with the right to hire and fire, you directed the activities and told the men what

(Testimony of Jack Benton.)

type of jobs they were to be on and shifts they were to work? A. Yes, sir.

Q. And the mechanics looked to you for complete supervision and direction? A. Yes, sir.

Q. Now, Mr. Benton, did you ever have conversations with the mechanics in regard to unionization in the place, I will say sometime during the year 1944?

A. Well, we all wanted a Union in there.

Q. Well, Mr. Benton, did you discuss it with any employees?

A. No, we all wanted it.

Q. Well, Mr. Benton, you had conversations, did you not, with the various employees in telling them what benefits the Unions were?

A. When I would hire a man they would always ask me, "How [152] much wages do you pay? Do you pay overtime?" I would say, "No sir." "What is your wages for heavy-duty man?" "\$1.25."

I couldn't hire a heavy-duty Diesel man.

Q. You have not answered my question.

A. I am answering it if you give me time.

Q. Let me forget this other thing. Did you have any conversation with any employees in the Wells, Inc., during the year 1944 with respect to the Union?

A. Not in the shop, we didn't talk it that way.

Trial Examiner Myers: Did you talk about it? We don't care whether you went upon the roof or swimming in the ocean. Did you talk to anybody about it?

(Testimony of Jack Benton.)

The Witness: Well, I would say——

Trial Examiner Myers: You said “Yes” before. Let us go ahead.

The Witness: Yes.

By Mr. Callister:

Q. What did you say to them? Think back, take your time, tell us what your conversation was.

A. We were all talking to—the men belonged to the Union. We had a working agreement there, we would probably have a bettering of it.

Q. I didn’t get that.

Trial Examiner Myers: The men that belonged to the Union?

The Witness: Men belonged there, we would have a better [153] one, they was always crabbing about time.

By Mr. Callister:

Q. Mr. Benton, can you tell us any conversation you had with any employee there in which you said anything about the Union to him? Do you understand my question? Did you talk to the employees and say anything for or against the Union?

A. No, I wouldn’t say we would converse it there.

Q. Did you ever say anything to any of the employees at Wells, Inc., I think you said you did. Tell us what you said.

A. Well, I can’t remember.

Q. Think back. You can remember what you said in substance and effect. You told them, did you not, the Union was a good thing?

(Testimony of Jack Benton.)

A. Well, we believed in it or wouldn't have joined it.

Q. You told these employees the Union was a good thing, they should join?

A. I never told them they should join, no sir.

Q. You told them it was a good thing, did you not?

A. I never told them they should join. We have a Union. If they wanted to join it, it was up to them, they were not forced.

Q. Did you tell them it was a good thing?

A. I suppose they all know.

Q. Did you tell them that? [154]

A. No, I wouldn't say I did.

Q. What did you tell them?

A. We had a Union. Most of them came in for the cure, if you know what I mean. They didn't join the Union, they didn't stay long enough. I didn't ask 90 per cent to join. They didn't have the money to join.

Q. The other 10 per cent you did ask to join?

A. Yes, and they joined. I didn't ask them to join, I told them we had a Union there if they wanted to join, and they joined.

Q. You figured that your duty as a steward or trustee was to get the men in the Union?

A. The job of the steward is take up trouble with the Union, between them and the agreement with the company.

Trial Examiner Myers: Did you ever take up any?

(Testimony of Jack Benton.)

The Witness: We didn't have anybody to take them up with. We didn't have anybody to go to.

Trial Examiner Myers: All right, will you stop. Let the man ask another question instead of rolling on over the same thing.

By Mr. Callister:

Q. I hand you, Mr. Benton, a letter dated December 18th, in which your signature purportedly appears. Is that your signature?

A. Yes, sir.

Q. Did you have anything to do with the preparation of that? [155]

A. No, sir.

Q. Did you help circulate it? A. No, sir.

Q. You had nothing to do with it?

A. Brought it around and I signed it.

Q. Who brought it around, do you remember?

A. No, I don't remember right offhand who did bring it around, or did I go up and sign it up to the—I signed it up to the Union Hall, I think, up to Mac's Garage.

Trial Examiner Myers: Will you answer the question and let us go ahead. The man asked you who brought it around. Do you remember?

The Witness: No, I really don't.

Mr. Royster: Could we identify that document for the record, so it will be a little less confusing? May I do so?

Trial Examiner Myers: Do you want it marked for identification?

Mr. Royster: No.

(Testimony of Jack Benton.)

Trial Examiner Myers: Then don't identify it at all.

Q. (By Mr. Callister) Mr. Benton, I assume that the employees there knew that you were a trustee of the Union did they not?

A. Yes, sir.

Q. They knew you were shop steward?

A. Yes, sir. [156]

Q. Now, Mr. Benton, in your conversation with Mr. Divine, you advised him you didn't want to be foreman any longer, is that correct?

A. In my conversation I would rather not have the job at \$25 difference in pay.

Q. You would rather be a mechanic?

A. I would rather be a mechanic because it was too much grief.

Trial Examiner Myers: Nobody asked you that. You are holding back this hearing about three hours. Will you just listen to the question and answer it directly. We can get along here.

Mr. Callister: That is all.

Trial Examiner Myers: Any questions, Mr. Apperson?

Mr. Apperson: No questions.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: No further questions.

Trial Examiner Myers: You are excused, Mr. Benton.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please, Mr. Royster?

Mr. Royster: May I have just a moment, Mr. Examiner?

Trial Examiner Myers: All right.

Off the record.

(Discussion off the record.) [157]

Trial Examiner Myers: On the record.

Mr. Royster: That is the Board's case, Mr. Examiner.

Trial Examiner Myers: The Board rests?

Mr. Royster: The Board rests.

Trial Examiner Myers: Are you ready to proceed, Mr. Callister?

Mr. Callister: May I have a five-minute recess?

Trial Examiner Myers: Very well, take a short recess.

(Short recess.)

Trial Examiner Myers: Are you ready to proceed with your case, Mr. Callister?

Mr. Callister: I am.

Trial Examiner Myers: Will you please call your first witness?

Mr. Callister: Mr. Divine, will you please come forward and be sworn?

H. B. DIVINE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: H. B. Divine.

(Testimony of H. B. Divine.)

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: D-i-v-i-n-e. [158]

Trial Examiner Myers: Where do you live, Mr. Divine?

The Witness: 333 Fodrin Way, Sparks, Nevada.

By Mr. Callister:

Q. By whom are you employed, Mr. Divine?

A. Well, Inc.

Q. When did you become employed by them?

A. Went to work for Wells, Inc?

Q. That is the one I want. A. In 1941.

Q. When was this last period?

A. After leaving Wells Cargo, Inc., I went to work for Wells, Inc., in December, 1944.

Q. In what capacity?

A. Superintendent of maintenance.

Q. Are you still in that capacity?

A. Yes, sir.

Q. Mr. Divine, calling your attention to some-time during the month of December, did you have a conversation with Mr. Jack Benton, who just testified here a few minutes ago?

A. Not December.

Q. Not in December, in January, pardon me.

A. In January.

Q. 1945? A. Yes, sir.

Q. Will you just tell us that conversation, if you will, [159] please, what you said and what Mr. Benton said?

(Testimony of H. B. Divine.)

A. Well, Mr. Benton came to me and told me that he was dissatisfied with the foreman job because there wasn't enough money in it for the grief there was, he would like to be relieved of it.

Q. Would like to be relieved?

A. I asked him to stay on for four or five days until I could replace him, which I did about within a week. I told him that I had a man to take his place that would take over the next day, I believe it was. He wanted to go to work in the shop as a mechanic.

Q. What did you say as to that?

A. I told him from my past experience that it had never worked out and I didn't want him as a mechanic.

Trial Examiner Myers: When you say "him" and "he"—

The Witness: Jack Benton.

By Mr. Callister:

Q. Did you have a conversation with Mr. Benton subsequent to the time his employment was terminated in January of '45?

A. Yes, Mr. Benton came after his check.

Q. About when was that?

A. Oh, the first part of January, about between the 7th and 10th.

Q. You mean February, don't you?

A. February, yes. [160]

Q. Where was that?

A. At Wells, Inc., shop.

(Testimony of H. B. Divine.)

Q. Was anyone present besides you and Mr. Benton?

A. Yes, I believe Mr. Darrell Webb.

Q. Who was he?

A. He was head bookkeeper.

Q. For Wells, Inc? A. Yes, sir.

Q. Just tell us the conversation you had with Mr. Benton at that time?

A. Mr. Benton, when he got his check, looked at it and said he wouldn't accept it, he was going to get paid for his vacation, overtime, and there was one other thing, I don't recall just what it was, and if he didn't get them, he was going to cause me a lot of trouble.

Mr. Callister: That is all.

Trial Examiner Myers: Any questions, Mr. Royster?

Mr. Royster: Yes, I have one or two questions.

Cross-Examination

Q. (By Mr. Royster) When did you have a conversation with Jack Benton in which he expressed dissatisfaction with the job as foreman?

A. About January 25, 1944.

Q. Are you sure it was as late as January 25?

A. Not positive. [161]

Q. Could it not be as early as the 10th of January?

A. It could have been, but I don't think so.

Trial Examiner Myers: What is your best recollection as to when this conversation took place?

(Testimony of H. B. Divine.)

The Witness: For this reason: that I was only about a week in getting another man to take his place so that it what I base the fact on.

Trial Examiner Myers: It that the only conversation you had with Benton about being relieved of work?

The Witness: Yes, sir.

Trial Examiner Myers: Did he ever express his dissatisfaction with the job as foreman prior to that time?

The Witness; No, sir.

Trial Examiner Myers: Just once?

The Witness: Just once.

Q. (By Mr. Royster) Now, is it not true, Mr. Divine, that in that conversation with Jack Benton, in which he expressed dissatisfaction with the pay he was getting for the foreman job that he asked you if you couldn't get some more money for him?

A. He asked me if it was possible.

Q. To get more money?

A. I didn't know whether it was or wasn't.

Q. That is about what you told him, is it not, that you didn't know whether or not it was possible?

A. Yes.

Q. Did he at that time express a desire, if you could not find a way to get him more money, to work as a mechanic?

A. Yes, he did.

Q. He is a good man too, is he not, Mr. Divine?

A. I haven't been around Jack Benton long enough to tell you.

(Testimony of H. B. Divine.)

Q. You know him by reputation, don't you? You know he has a reputation of being a good heavy truck mechanic?

A. Well, I have heard pro and con.

Mr. Callister: What was that?

The Witness: I have heard pro and con.

Q. (By Mr. Royster) Now, who did you hire to replace Jack Benton?

A. G. W. Hollenback.

Q. From whom did you hire Mr. Hollenback?

A. Mr. Hollenback was working for Wells, Inc. at the time.

Q. You promoted Mr. Hollenback to Mr. Benton's place? A. That is right.

Q. Had Mr. Hollenback worked with you before? A. Yes.

Q. Where?

A. He worked for me at Elko, Nevada, and also for me at Las Vegas, Nevada.

Trial Examiner Myers: That is when you were working for [163] other corporations of the Wells brothers?

The Witness: Wells Cargo, yes.

Q. (By Mr. Royster) Did Mr. Hollenback come up to Reno to work for Wells, Inc. about the same time you did? A. Yes.

Q. Had he worked in the capacity of assistant under you at these other operations?

A. The latter part of the Las Vegas operation.

Trial Examiner Myers: When was that?

(Testimony of H. B. Divine.)

The Witness: That would be about August and September, 1944.

Q. (By Mr. Royster) Are you a member of the International Association of Machinists, Mr. Divine?

A. Not at the present time.

Q. Were you in December, 1944 or January, 1945? A. No.

Mr. Royster: I believe that is all.

Redirect Examination

Q. (By Mr. Callister) Have you ever been a member?

Trial Examiner Myers: Wait a minute. Mr. Apperson, any questions?

Mr. Apperson: No questions.

Trial Examiner Myers: You may proceed.

Q. (By Mr. Callister) Have you ever been a member? A. Yes. [164]

Q. Mr. Divine, can you tell us why you stated in your opinion a man who has been foreman will not work out as a mechanic? I think you stated you told that to Mr. Benton, is that correct?

A. That is right.

Q. Can you tell us why, if you know?

A. Well, I have run shops since 1930 and I have tried demoting several foremen to mechanics and they won't concentrate on the work. They are constantly criticizing, and for that reason I didn't want to try Jack Benton as an ordinary mechanic.

Q. Were you told by anybody to discharge Jack or find some excuse to get rid of him?

(Testimony of H. B. Divine.)

A. No, sir.

Q. It was done entirely because of the conversation you had with Mr. Benton? A. Yes, sir.

Mr. Callister: That is all.

Recross Examination

Q. (By Mr. Royster) Well, now, Mr. Divine, in other instances in your experience you say it has proven unsatisfactory to demote a man. Well, here was a situation where the man was requesting the demotion.

A. Yes, he requested it.

Q. In the other instances that you have reference to was [165] that the situation there, or was it a part of the management's determination that the man should be demoted? A. I don't recall.

Q. Would you not say that there might be a distinction in the man's attitude towards his work if the demotion is voluntary and if it is involuntary?

A. It is possible.

Q. Now, you had a conversation with Jack Benton, in which he made a certain request of you?

A. Yes.

Q. Did you, up until the date that you discharged Jack Benton, tell him that you had decided that you could not get more money for him?

A. No.

Q. Well, is it true then that after Jack Benton told you that he was dissatisfied with the foreman job, unless he could get more money, and failing to get more money he would like to go to work as

(Testimony of H. B. Divine.)

a mechanic, you had no conversation with him until five minutes to six that January 31st you discharged him?

A. The last conversation I had with him was about January 25th. I had no further conversation with him until I told him that I had the man to replace him.

Q. In the meantime from January 25th, as you say, and until January 31st, you determined in your own mind to find a [166] replacement for Jack Benton and discharge him, is that correct?

A. Yes, he requested it.

Q. Well, now, he had requested either more money for his work as foreman or a transfer to a mechanic's job, isn't that so? A. Yes.

Q. In the meantime, in the five or six-day period, without making known to Jack Benton your determination, without going to him and saying, "I am sorry, Jack, we can't do a thing for you on more money", you made up your mind to discharge the man and at five minutes before quitting time on the 31st you did discharge him?

A. I didn't discharge him.

Q. Who did?

A. I told him that I had his release; he had requested another foreman to be put in his place.

Q. He had requested more money for his job as foreman, had he not? A. Yes.

Q. Did you consider that a resignation?

A. Yes, I would.

Q. A man has to be pretty careful what he says around you.

(Testimony of H. B. Divine.)

Trial Examiner Myers: Don't argue with the witness.

Q. (By Mr. Royster) Well, it is your testimony now that [167] you did not discharge Jack Benton?

A. Well, it would be subject to controversy, you could call it whatever you please.

Q. What did you consider you did?

A. I consider I replaced him as he requested.

Q. Did he request that you replace him?

A. Yes, if I couldn't get him more money.

Q. And if he could go to work on the night shift or as a mechanic, isn't that correct? Isn't it true that Jack Benton did not quit that job? You know what quit means and what discharge means. Now, you know whether he quit or was discharged. Which was it?

A. Well, he came back the following morning and told me after this last conversation that he had decided that I had fired him. He didn't decide that that night.

Q. No matter what Jack Benton decided, you knew what you were doing, did you not, at five minutes to six that night? What did you do five minutes to six on the 31st, did you discharge Benton or accept his resignation?

A. Well, if you want to call it that, he was discharged.

Mr. Royster: That is all.

Mr. Callister: That is all.

Trial Examiner Myers: You are excused, sir.

Thank you very much.

(Witness excused. [168])

Trial Examiner Myers: Will you call your next witness, Mr. Callister?

Mr. Callister: Mr. Examiner, at this time before I forget, we have made reference to this petition that Mr. McBride stated he signed, and I think for the purpose of the record, and I suggest this to Mr. Royster, that this be made a part of the record. I think the Board should have it.

Trial Examiner Myers: Are you offering it in evidence?

Mr. Callister: If Mr. Royster does not desire to do so, I will.

May I have it, Mr. Royster.

Mr. Royster: Yes, you may have it, Mr. Callister. Are you offering it in evidence?

Mr. Callister: Yes.

Trial Examiner Myers: Any objection?

Mr. Royster: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it as Respondent's Exhibit No. 1.

(Thereupon the document above referred to was received in evidence and marked Respondent's Exhibit No. 1.)

Mr. Callister: Mr. Examiner, Mr. Royster desires, and I think it is proper, that we have your order that we may replace it with a duplicate copy so they may have the original, [169] which is perfectly agreeable with us.

Trial Examiner Myers: Very well, you may substitute two copies in lieu of the original.

Mr. Callister: Mr. Divine, I would like to ask you a couple of questions in regard to this file, if I may, Mr. Examiner.

Trial Examiner Myers: Go ahead.

Mr. Callister: Please take the stand again.

H. B. DIVINE

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Callister) Would you please look at Respondent's Exhibit 1 and tell me if there are any signatures that appear thereon who have a job classification other than mechanics, and if so, read the names to the Reporter, please, and designate what job classification they had from the date on which this particular petition appears, December 18, 1944?

A. D. A. Jensen, greaser; M. McCloud, greaser; E. S. Casinella, foreman; Vernon Burna, shovel operator; James D. Harrison, greaser; Ray Reisbeck, tireman.

Mr. Callister: That is all.

Trial Examiner Myers: You are excused. [170]
(Witness excused.)

Trial Examiner Myers: Off the record.
(Discussion off the record.)

Trial Examiner Myers: On the record.

We will stand adjourned now to 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., Friday, August 24, 1945, the hearing was adjourned until tomorrow, Saturday, August 25, 1945, at 9:30 o'clock a. m.) [171]

Saturday, August 25, 1945.

PROCEEDINGS

Trial Examiner Myers: Are you ready, Mr. Callister?

Mr. Callister: I am, Mr. Examiner.

Trial Examiner Myers: Are you ready, Mr. Royster.

Mr. Royster: Yes.

Mr. Callister: Last night, Mr. Examiner, I withdrew Respondent's Exhibit 1 for the purpose of having photostatic copies made at the request of Mr. Royster, Attorney for the Board, and I have this exhibit which I give back to you, Mr. Royster, and I will give to the Board, the Examiner, a photostatic copy of it, if that is agreeable.

Trial Examiner Myers: You may substitute the photostat in lieu of the original. Give two copies of the photostat to the Reporter.

Mr. Callister: Mr. Wells, will you take the stand, please?

J. W. WELLS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: J. W. Wells.

Trial Examiner Myers: What does the "J" stand for?

The Witness: Joe W. Wells.

Trial Examiner Myers: Where do you live, Mr. Wells? [173]

The Witness: 1453 Michigan Avenue, Salt Lake City, Utah.

Trial Examiner Myers: You may be seated, Mr. Wells, and you may proceed, Mr. Callister.

Q. (By Mr. Callister) Mr. Wells, what is your position with the Wells, Inc., Respondent herein?

A. President.

Q. How long have you been in that capacity?

A. Since 1936.

Q. Mr. Wells, I think you were here in the hearing room yesterday when Mr. McKay, Mr. McShane and Mr. Anderson testified, were you not?

A. Yes, sir.

Q. You will recall that they testified to certain conversations they purported to have had with you, the first being on May 16th, 1944 at Henderson, Nevada, and then subsequent conversations.

I wish you would, Mr. Wells, tell us in substance and effect what those conversations were that you

(Testimony of J. W. Wells.)

had with Mr. McShane and Mr. Anderson and Mr. McKay and designate to us who was present and where they were when you relate the conversations. I would suggest that I call your attention to the first conversation in Henderson, which is close to Vegas, I assume, Las Vegas, Nevada, where you had the first conversation. [174]

A. Well, I had been meeting with Mr. Glen Anderson and Mr. McShane for a period of several months prior to May 16, while we were negotiating the contract for Wells Cargo, Inc.

Q. Now, is that a different corporation from the Respondent herein, Wells, Inc.?

A. Yes. Wells Cargo, Inc. is an entirely separate company than Wells, Inc.

Q. I see.

A. And on May 16th the contract for Wells Cargo was finally completed and signed by both Mr. McShane and Mr. Anderson and myself. After the conclusion of the signing of the contract, why, Mr. McShane brought up the fact that he would like to work out something in the Reno territory. I think he had specifically in mind more about Luning, he was trying to tie Luning.

Q. What do you mean by Luning? Where is that?

A. Luning, Nevada is 26 miles south of Hawthorne.

Trial Examiner Myers: He means what is there that Mr. McShane wanted to tie in?

(Testimony of J. W. Wells.)

The Witness: We have shops located at Luning, Nevada operated by Wells, Inc.

Q. (By Mr. Callister) That is what I want to know.

A. And we had mechanics there that originally belonged to the American Federation of Labor Teamsters and were signed up by the Teamsters.

Mr. McShane and Mr. Anderson called on these men.

Q. Coming back to your conversation, Mr. Wells, on May 16th, did they discuss Luning as well as Reno?

A. Yes, I believe they were discussing primarily Luning and Reno also.

Q. What did they say and what did you say?

A. Mr. McShane asked me if I would be willing to enter into a contract for the machinists, for the shop employees in Reno and Luning and I said at the time that I would be if he could show me that he represented, had a representative group of men in my employment at that time.

Q. Then what was said, if anything?

A. I believe he told me that they had one or two men already belonging to the Machinists Union. My shop superintendent, I believe, had a card that he had always carried.

Q. Who was your shop superintendent?

A. O. A. Richer, superintendent, had a card that he carried all the time, and there may have been one or two others. That is all that I recall.

And he told me that they would contact the men

(Testimony of J. W. Wells.)

and furnish me with additional information that they represented the majority of the men in my Reno shop. I think that is about all that took place that I recall pertaining to this matter.

Q. I hand you Board's Exhibit 5 and ask you if you ever received [176] a copy of this, which is dated August 8th?

A. Yes, I did receive a copy of this letter.

Q. I call your attention specifically, Mr. Wells, to where it says "We will submit proof of this representation at the first meeting with you."

A. That is right.

Q. Subsequent to August 8th did you have a meeting with them?

A. I can't be too specific about dates. I met with Mr. McShane and Mr. Anderson, I would say, on, oh, fifteen or twenty times.

Q. Where was this?

A. Well, I met them in Las Vegas, I used to see Glen Anderson practically every day, every few days, in Las Vegas. Mr. McShane was doing considerable traveling and he was working on a job, I believe, at Morenci, Arizona. A lot of time was consumed in there and we had tried to get together on some meetings. He would either be going to Arizona or I would be headed for Salt Lake City or some place, but I saw him in Las Vegas and at Henderson, at Luning and at Reno.

Q. Now, let us tie this in, Mr. Wells. When would you say you met with him after August 8th?

Would you give us just an approximate time and place in respect to this Reno situation?

A. That letter, I did not receive, I did not read the letter [177] myself until some time in September. I took a vacation in August and I left Las Vegas, I believe, on August 7th and came to Reno, and I met Mr. McShane in front of my shop. He told me and informed me——

Q. (Interposing) Where was this?

A. At Reno, Nevada.

Q. Approximately when?

A. Oh, I would say around August 10th, 12, along in there somewhere. I was leaving on my vacation and I briefly talked with him for several minutes in front of the shop.

Q. What did you say and what did he say?

A. He asked me when we were going to be able to get together for a meeting. I told him I wouldn't be back from my vacation until around Labor Day and that I would be in Vegas, I would return directly to Las Vegas and he could contact me there and we would try to get together and arrange a meeting.

Q. Then when did you meet with him, if you recall, Mr. Wells? Approximately when?

A. Well, I would say it was some time in the latter part of September or first part of October.

Q. Where was this meeting held?

A. I believe he came to the shop at Henderson.

Q. That is near Las Vegas?

A. That is near Las Vegas, yes, that is where we had our shops, at Henderson. [178]

(Testimony of J. W. Wells.)

Q. Tell us the substance of that conversation, if you will.

A. He and Mr. Glen Anderson were there and they had several slips showing that they had contacted the men and that they had several men signed up agreeable to have the Machinists Union represent them, and I looked over these slips and——

Trial Examiner Myers: Do you know what was on the slips?

The Witness: Yes, I do. I believe they are the same slips or similar to the ones that were entered.

Q. (By Mr. Callister) I hand you Board's Exhibit 2(a) and ask you if that is what you are referring to, Mr. Wells?

A. Yes, this is the same slip they showed me.

Q. Then what did you say, if anything, after you looked at these slips?

A. I asked McShane and Anderson if they claimed representation of all the men that they had signed up on these slips and he said, Yes, that they did, they were going to have more signed, but this was a representative group.

Immediately upon looking at these slips I noticed that several men and employees were classified as greasers, washers and tiremen and so forth, and knowing the previous contracts we have with the AF of L Teamsters Union——

Q. (Interposing) What do you mean by "knowing" them? What were you referring to?

A. We have had contracts with the Teamsters Union. [179]

(Testimony of J. W. Wells.)

Q. Where? A. Here in Reno?

Q. All right, go ahead.

A. And Luning.

Trial Examiner Myers: You mean Wells, Inc.?

The Witness: Wells, Inc., yes. Where they represented the greasers and washers and tiremen.

So, after looking over these slips and determining the fact that the Machinists Union was claiming jurisdiction of these men, I immediately asked Mr. Anderson and Mr. McShane to definitely define the unit that they intended to represent for Wells, Inc.

Q. (By Mr. Callister) Can you tell us why you did that, if there was any reason for it?

A. I was definitely afraid of a jurisdictional dispute.

Q. With whom?

A. Between the Teamsters Union and the AF of L Machinists Union, both claiming representation of the same men.

Q. Well, Mr. Wells, could you tell me, did you ever have a conversation with the Teamsters representative, whether they represented the greasers and washers and tiremen and so forth?

A. Yes. After this meeting with Mr. McShane and Mr. Anderson.

Trial Examiner Myers: What meeting is that?

The Witness: This in Las Vegas.

Trial Examiner Myers: You mean the one——

The Witness: (Interposing) We just talked about.

(Testimony of J. W. Wells.)

Q. (By Mr. Callister) The latter part of October?

A. The latter part of September or first of October, 1944. I arrived in Reno and contacted Mr. Harry Anderson.

Q. Who is he?

A. Business Agent for the Teamsters Local in Reno, Nevada.

Q. The same Harry Anderson that was at this meeting all day yesterday?

A. Yes, sir. I told them that it looked to me that the Machinists were trying to claim jurisdiction of the greasers and washers and other men that I felt belonged to the Teamsters Union, due to our prior contracts.

Q. Did you have any further conversation with Mr. Anderson at that time? Did he say anything about it?

A. Yes, he said definitely that the greasers, the washers, the hostlers, the tiremen, and the parts men belonged to the Teamsters, come under the Teamsters' jurisdiction.

Q. Did he say anything whether he would permit the Machinists to have them under their jurisdiction, was anything said in regard to that line of thought?

A. He said, No, he would definitely—the men belonged to him and he would represent them and we would get into trouble if we negotiated with the Machinists signing up these employees. [181]

(Testimony of J. W. Wells.)

Q. Now, when you say "these employees", who do you refer to?

A. Greasers and washers.

Q. Coming back to your conversation the latter part of October just referred to, was anything else said by you, in other words, how was the meeting left, with any understanding or conversation? What was it? Just tell us.

Trial Examiner Myers: Wait a minute, are you referring to the meeting that he said took place the latter part of September or the beginning of October?

Mr. Callister: Yes, I stated the one in October.

Q. (By Mr. Callister) That was the meeting with Mr. Anderson and Mr. McShane.

A. This is the meeting I had in Las Vegas.

Q. I am calling your attention back to that now.

A. No, the only thing we decided on that, we should meet in Reno, Nevada and discuss it here in the territory where they were claiming jurisdiction.

Trial Examiner Myers: Who suggested that?

The Witness: I believe suggested that we should meet at Reno. I wanted to meet with my brother, Howard, and Bob and McShane and Anderson.

Q. (By Mr. Callister) Mr. Wells, I hand you Board Exhibit 8, which is a telegram, and ask you if you ever sent that.

A. Yes, I sent this. [182]

Q. I call your specific attention to where it

(Testimony of J. W. Wells.)

states that you sent this to Mr. McShane at Reno and states:

“You promised at least ten days notice before meeting.”

Did you have a conversation with regard—with Mr. McShane at that time, and I now refer to October, 1944, at Vegas, that he would give you ten days notice before a meeting to be held at Reno?

A. Yes, we were closing down the government contracts that we had at Las Vegas and it was pretty hard for me to go away. Evidently when I sent this wire I had already scheduled a trip out and he wanted to meet with me immediately and I asked him and we had a prior agreement that we would give each other sufficient time to arrange a meeting.

Q. Now, when was the next time that you met with Mr. McShane, if you know, and where and when and who was present, or was any of the Union Business Agents of the Machinists?

A. The next meeting that I recall after our meeting in Vegas, I was down in front of the Machinists Union office in Las Vegas, Nevada, and I talked with Mr. McShane and Mr. Anderson briefly.

Trial Examiner Myers: When was this, can you fix the date or the approximate date?

The Witness: I would say the latter part of October or the first part of November.

Trial Examiner Myers: Was it prior to receipt of the [183] telegram from Mr. McShane?

The Witness: No, it was after that time.

(Testimony of J. W. Wells.)

Trial Examiner Myers: Because the telegram was dated October 30, 1944.

The Witness: It was after, I am sure, that telegram was sent.

Trial Examiner Myers: Could you tell me about how many days after or how many weeks after?

The Witness: No, I don't believe I could tell you. The only thing that I know, it was after our meeting in Vegas and prior to our meeting in Reno with the Labor Conciliator, so possibly sometime during the month of November.

I talked with Mr. McShane and Mr. Anderson at the time, I believe I was sitting in my car and they came out and talked to me and they said, "Well, what is going to happen about this Reno contract?" I told them that until they definitely established the unit that they intended to represent that I could not bargain with them. Mr. McShane says, "Well, we will have to call in a Labor Conciliator in that case. and if we cannot get together on that basis."

I said, "That is perfectly agreeable with me if you want to call in a Labor Conciliator, you go ahead," which he did.

By Mr. Callister:

Q. All right, now, what happened after that? When did you meet again, if any? [184]

A. We met with the Labor Conciliator.

Q. When and where? A. Here in Reno.

Q. About what time?

A. The Reno office, I believe in the month of December.

(Testimony of J. W. Wells.)

Q. What was present, Mr. Wells?

A. Mr. McShane, Mr. Curtin.

Q. Who is Mr. Curtin?

A. He was the Conciliator sent in from San Francisco.

Q. Who else?

A. Howard Wells and myself.

Q. Now, what took place there, what did you say and what was said by the other people?

A. The main purpose of the meeting was to determine what unit——

Mr. Royster: I ask that the answer so far given by stricken as not responsive to the question.

Trial Examiner Myers: Strike out the question. The Reporter will read the question to the witness.

(Question read by the Reporter.)

A. Well, we met in the office.

By Mr. Callister:

Q. You mean your office of Wells, Inc.?

A. The office of Wells, Inc., and tried to get——

Mr. Royster: (Interposing) Same objection.

Trial Examiner Myers: Don't break in on the witness. [185] It is very confusing. Let the witness answer and if any part of it you think should be stricken, I will entertain a motion to strike. Don't give us any conclusions. "Tried" is a conclusion. Tell us what was done and said there, as Mr. Callister asked you.

The Witness: I asked Mr. McShane to specifically tell me the unit that he intended to represent. He got out a pencil and a piece of paper, sitting at

(Testimony of J. W. Wells.)

the desk, and he says, "What men do you think we should represent, what about these classifications?" and we talked back and forth with the Conciliator and Mr. McShane and we were never able nor did we ever get from Mr. McShane the unit that he intended to represent, even with the Conciliator there.

By Mr. Callister:

Q. Mr. Wells, when he stated to you, Mr. McShane, "What men do you want us to represent?" what did you say to that, if anything? Did you make any statement?

A. I don't recall whether I made any particular statement or not.

Q. What else was said, Mr. Wells, if anything, in regard to this unit, do you recall?

A. When the meeting adjourned, Mr. McShane was supposed to furnish us a copy of the unit he intended to represent, along with a copy of a contract that we asked for, to specifically show—the reason we asked for this contract was that we were not able to get the unit, get him to tell us what unit he represented. We asked him for a contract, so the contract would show, figuring the contract would show the unit that he intended to represent. He never furnished us that material.

Q. Mr. Wells, when was the first time you ever heard the unit requested that they were going to represent?

A. Yesterday morning I heard the stipulation by the Machinists Union here, was the first time that

(Testimony of J. W. Wells.)

I had ever heard the unit that they were going to represent.

Mr. Callister: Mr. Royster, I do not know whether this is improper, Mr. Examiner, I will submit it to you and if you want it off the record or on, it doesn't make any difference to me. I assume that the Government or the Board has in their possession or the Union has, who is present here this morning, other authorizations than those which they submitted yesterday. In other words, Mr. Wells has testified that he saw other authorizations than those which are incorporated in what may be termed the Board's Exhibit 2, which referred to job classifications of individuals other than mechanics, particularly greasers, and I will ask the Union or the Government here if they have such authorizations with them.

Mr. Royster: I can look. I believe that we do have such authorizations.

Trial Examiner Myers: Off the record. [187]

(Discussion off the record.)

Trial Examiner Myers: On the record.

While you are looking over those papers, Mr. Callister, I will ask Mr. Royster to let me have the originals of Exhibit 2. I would like to compare them with the copies that he submitted and also with the payrolls that are in evidence.

Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Mr. Callister: I wonder if the Reporter would

(Testimony of J. W. Wells.)

mark these Respondent's Proposed Exhibits 2(a), (b), (c) and so forth?

(Thereupon, the documents above referred to were marked Respondent's Exhibits 2(a) through (f) inclusive for identification.)

Mr. Callister: Mr. Royster, I hand you Respondent's Proposed Exhibit 2(a), (b), (c), (d), (e) and (f) and ask you if you will stipulate that they are copies of the originals.

I asked Mr. Royster for the originals and apparently he hasn't got them and these come from his files, so I assume they are copies of the originals, are they not, Mr. Apperson?

Mr. Apperson: I wouldn't know myself. Maybe Mr. Royster [188] would know.

Mr. Callister: They are from Mr. Royster's files and I would assume they are copies. But I assume that it would be best to have in the record, that they were copies.

Mr. Royster: The Board will so stipulate.

Mr. Callister: And that the names which appear thereon are the signatures of the individuals?

Mr. Royster: Yes.

By Mr. Callister:

Q. Mr. Wells, I hand you Respondent's Exhibits 2(a) to 2(f) inclusive and ask you if you recall whether the names of those individuals who appear thereon were included in the list of authorizations which you have heretofore testified to were presented to you at a meeting by the Union. Will you look them over carefully and see if those names

(Testimony of J. W. Wells.)

were included in that group of authorizations you have referred to this morning, as best you can recall?

A. I couldn't testify that every one of them, but I do see two in particular here that were not shown to me in Las Vegas.

Q. Would you say the rest were?

A. I don't think they were, no.

Trial Examiner Myers: You do not think any of them were?

The Witness: No, I wouldn't say that. I would say the majority were not shown in in Las Vegas.

By Mr. Callister:

Q. What I am now asking, Mr. Wells, the [189] names that appear on these exhibits, that is Respondent's 2(a) to 2(f), inclusive, were those names on authorizations of which you have referred to in your conversation this morning?

Do you understand my question?

A. No. Let me have it again.

Q. You recall, Mr. Wells, you testified previous to this recess that you had a conversation in which Board's Exhibits 2, that is, similar authorizations to those, were presented to you, which you looked over. You recall that? A. That is right.

Q. And you further stated that you found that there were some names on these lists of authorizations that were not mechanics, and you called that to their attention.

Now, I am asking you those names that were in that list of the group that were presented to you

(Testimony of J. W. Wells.)

by the Union that morning, are any of them the same as which we now refer to as Respondent's Exhibits 2(a) to 2(f), inclusive? In other words, were any of the names that appear on these slips included in those authorizations that you referred to? Have you even seen them before?

A. Yes. Some of these names appears in the group that they showed me at the time when they showed the entire group of authorizations that they had from employees.

Q. Now, Mr. Wells, I notice the name of Ray O. Falk on [190] Respondent's Exhibit 2(a). What was his job classification June 3, 1944, if you know?

A. Parts man.

Trial Examiner Myers: Was his authorization shown to you at that meeting, by Mr. McShane or Mr. Anderson?

The Witness: Yes, it was.

By Mr. Callister:

Q. I note Mr. Jack Benton's signature appears on this authorization, Respondent's Exhibit 2(b). Did you see that at that time?

A. I don't believe I saw the one from Benton at that time.

Q. The name of S. A. Williams, on Respondent's Exhibit 2(c)?

A. I wouldn't say for too sure about S. A. Williams.

Q. What was his job classification June 3rd, the date of this exhibit? A. Greaser.

Q. O. A. Jensen, Exhibit 2(d), what was his

(Testimony of J. W. Wells.)

job classification, if you know? Well, that is 12/25.

A. 12/25 he was a greaser.

Q. He was a greaser? A. Yes.

Trial Examiner Myers: Was his authorization shown to you at that meeting?

The Witness: No.

By Mr. Callister:

Q. Dewey A. Lambert, what was his job [191] classification, that is 2(e).

A. He is a greaser.

Q. Did you see that authorization at that time?

A. No, I don't believe Lambert's was there.

Q. Now I show you O. A. Richer. What was his job classification at that time?

A. Superintendent of maintenance.

Q. Did you see his authorization at that time?

A. I don't think they showed it to me at that time.

Mr. Callister: I would like to have these introduced, if I may, Mr. Examiner.

Mr. Royster: No objection from the Board.

Mr. Apperson: No objection from the Machinists.

Trial Examiner Meyers: There being no objection, the papers are received in evidence and I will ask the Reporter to please mark them Respondent's Exhibit 2(a) through and including 2(f).

(The documents heretofore marked Respondent's Exhibits Nos. 2(a) through 2(f), inclusive, for identification, were received in evidence.)

(Testimony of J. W. Wells.)

By Mr. Callister:

Q. Now, Mr. Wells, coming back to your conversation that you referred to with the Union in respect to these authorizations, as I recall, you stated that in that list or group you noticed other than mechanics in the authorizations. [192]

A. Yes.

Q. And that is the time that you called that to their attention, is that it?

A. That is correct.

Mr. Callister: You may cross examine.

. Cross Examination

By Mr. Royster:

Q. What office do you hold in Wells Cargo, Mr. Wells? A. President.

Q. Now, you mentioned that both you and Mr. McShane——

Trial Examiner Myers: Before you on that, I just want to clear up about that Wells Cargo. Who are the other officers of that operation? Are they your brothers?

The Witness: Yes, similarly the stockholders and officers of both corporations are almost identical.

Trial Examiner Myers: That is to say that your brothers Howard and Robert are also stockholders and officers of the Wells Cargo?

The Witness: That is correct.

Trial Examiner Myers: And the three of you own all the stock or approximately all the stock?

The Witness: I would say the majority of stock.

(Testimony of J. W. Wells.)

Trial Examiner Myers: Of both corporations?

The Witness: Both corporations.

Trial Examiner Myers: All right. I am sorry to break [193] in.

By Mr. Royster:

Q. You mentioned that you and Mr. McShane both traveled about a good bit and there was some difficulty in meeting. Did you ever offer to meet with Mr. McShane at a time when he stated he was unable to meet with you?

A. Yes, I recall one time we had a meeting scheduled and he was going to be gone for some thirty days, he told me, I believe it was some trouble or some work that he had to do somewhere in Arizona, I believe Morenci, Arizona.

Q. When was this tentative meeting scheduled?

A. I don't know, that was possibly in July, June or July.

Q. When was the arrangement for the meeting made?

A. I recall that I had a conversation with Mr. McShane and told him that I would be available. He told me that he wouldn't be available. I can't tie any specific dates to this, but he told me he wouldn't be available, he had to go to Arizona, but Glen Anderson would be out to see me.

Q. What was it proposed that you discuss at this meeting, for what purpose was the meeting to be held?

A. I believe they wanted to talk about the Reno operation.

(Testimony of J. W. Wells.)

Q. About securing recognition from Wells, Inc., for machinists? A. I believe so.

Q. Now, Mr. Wells, you stated that Wells, Inc. is under [194] contract with the International Brotherhood of Teamsters.

A. Well, yes, sir.

Q. Do you have a copy of that contract with you? A. No, I don't at the present time.

Q. Could you get it for us?

A. I believe we can.

Mr. Callister: We will be happy to give you a copy, Mr. Royster.

By Mr. Royster:

Q. When did you first discuss with Mr. Harry Anderson, representative of the Teamsters, any question involving the greasers?

A. I talked to him two or three times about it, last fall, I would say from during the months of October and November.

Q. That was after the time when you saw names of greasers on Respondent's Exhibit 2?

A. Yes, that is correct.

Q. Mr. Wells, do you have knowledge of a Form 10 recently filed with the Regional War Labor Board in San Francisco affecting wages of some of your employees in the Reno shop?

A. I am not familiar with it, no.

Q. Can you tell me who, if anyone, in your organization would be familiar with such a document if it were filed?

(Testimony of J. W. Wells.)

A. I think my brother Howard would probably be able to tell you that.

Q. Do you recall in the conversation with Mr. McShane at [195] Las Vegas on a date which he testified as October 5, 1944, and which I believe you placed in early October or late September, that after examining the authorizations which he then presented to you, you said: "Hell, you've got everybody on here but me!"? A. That is correct.

Q. Now, is it correct to say, Mr. Wells, that after talking to Mr. Harry Anderson last October or November, you feel that the washers, greasers, tiremen, come within the jurisdiction of the Teamsters Union and not the jurisdiction of the Machinists?

A. Well, I don't know, I still feel there is some question. I don't know who really does claim jurisdiction of them.

Q. Now, you testified that in a meeting of December 22nd, 1944, that Mr. McShane took a piece of paper and in the discussion of the unit wrote down what he considered to be the bargaining unit.

A. No, he didn't write down, he wouldn't give us the bargaining unit. He was trying to determine a classification. He was trying to switch some classifications around, but he didn't put anything down in writing, because that was just exactly what I was after, for him to put it down in writing.

Q. I show you Board's Exhibit 6, Mr. Wells, and ask if you recognize it.

(Testimony of J. W. Wells.)

A. I sure do. [196]

Q. What is it?

A. It is a copy of the contract between Wells Cargo, Inc. and Machinists Local of Las Vegas, Nevada.

Q. Is it the contract that was signed May 16, 1944?

A. That is correct.

Q. Now, do you recall in the meeting at Las Vegas in October, 1944, that a copy of this contract was used in your discussions?

A. Possibly a copy of it was used in our discussions, yes.

Q. Do you recall that Mr. McShane at that time told you that the Union desired to represent at Reno the same classifications of employees as it represented under this contract at Las Vegas?

A. No, I don't recall.

Q. Do you recall a discussion of the wages of Machinist Diesel Specialist?

A. I think we talked some about wages, possibly about Diesel Specialist wages.

Q. Do you not recall that you objected to having any such classification established in your Reno operation?

A. Possibly I did, yes.

Q. Do you have a recollection as to it?

A. No, I wouldn't say that I had.

Q. Do you recall at that meeting that in discussing the terms of an agreement or in your discussions, that you objected [197] to paying overtime pay after 40 hours or after 8 hours?

A. No, I couldn't say. The only thing that I

(Testimony of J. W. Wells.)

know, that we did have a general discussion regarding the contract.

Q. You had a general discussion, did you not, with regard to wages, hours and working conditions of the employees in the Reno shop?

A. No, I couldn't say that, no.

Q. Well, you said you had a general discussion of a contract. Will you tell us what your discussion pertained to?

A. Yes, I immediately, after he presented this to me, he said, "I would like to have the same contract we have at Las Vegas at Reno." I immediately said, "Well, before I can accept or look at any contract, you will have to tell me the unit that you are bargaining for." This came under specific instructions from my Attorney, that I could not bargain if I didn't want to get into a jurisdictional dispute until he told me the unit that he intended to bargain for.

Q. Then he told you what unit, did he not?

A. No, sir.

Q. Didn't he say it was the same unit as represented by the Union at Las Vegas?

A. No, sir.

Q. Now, you testified, if I recall correctly, that upon seeing the names of employees whom you knew to be greasers affixed to the authorizations shown to you on October 5th or [198] about October 5th, that you commented about that.

A. Yes, I said, "I think you got everybody in here but me."

(Testimony of J. W. Wells.)

Q. That was the extent of your comment?

A. No, I don't think so. I told him that I think he had other men in there besides the men that would come under the jurisdiction of the Machinists, my version of it.

Q. Well, now, did you tell him particularly what men you had reference to?

A. No, I don't think I did.

Q. Mr. Wells, do you know of your own knowledge whether or not there has ever been a petition filed by the Union here with the National Labor Relations Board seeking certifications as bargaining representative for the group of employees in the Reno shop?

A. I think my attorney could answer that better.

Q. The question is, Do you know of your own knowledge? A. No, I don't.

Q. In your operation under the contract that you have with the Teamsters——

Trial Examiner Myers: Have you got a contract at the present time with the Teamsters?

The Witness: Yes, we have at the present time a contract.

By Mr. Royster:

Q. I think I will reserve my further questions until I can see a copy of that contract. [199]

Mr. Callister: I will see if we can get you a copy right away. I imagine we will finish before noon. I will send someone over there.

(Testimony of J. W. Wells.)

Trial Examiner Myers: We will take a short recess.

(Short recess.)

Trial Examiner Myers: On the record.

By Mr. Royster:

Q. Mr. Wells, did you sign a contract with the Operating Engineers covering operations that you had in Mills Field, California?

A. No, I didn't sign a contract.

Q. Did your company sign such a contract?

Trial Examiner Myers: Which company is that?

By Mr. Royster:

Q. Wells, Inc.

A. I couldn't testify one way or the other, I didn't see it.

Q. You are President of Wells, Inc.?

A. That is correct.

Q. Don't you know whether Wells, Inc. has or has not signed such a contract?

A. No, I do not.

Q. Do you know whether or not Wells, Inc., has ever signed a contract with the Teamsters covering operations at Luning, Nevada?

A. Yes, I believe we have a contract there.

Q. It is true, is it not, that contract covered mechanics as [200] well as teamsters?

A. At one time it did, yes.

Q. And you were not greatly concerned about the jurisdictional aspects of that contract, were you?

(Testimony of J. W. Wells.)

A. At that time, as I recall, the AF of L Machinists Union was not a member of the affiliated labor organization.

Mr. Callister: What do you mean by that?

Trial Examiner Myers: I guess he means that at that time the International Association of Machinists was not affiliated with the American Federation of Labor.

Mr. Callister: That is what I want the record to show.

The Witness: That is correct.

By Mr. Royster:

Q. Was that the consideration which impelled you to sign such a contract without complaint?

A. Well, I think we were rather new in the game of contracts and so forth at that time.

Trial Examiner Myers: Did you negotiate a contract?

The Witness: Yes, I had something to do with it.

Trial Examiner Myers: Who else had something to do with it?

The Witness: Howard Wells.

Trial Examiner Myers: Who did the most of the negotiating?

The Witness: I would say Howard Wells did most of the negotiating on that. [201]

Trial Examiner Myers: Who negotiated the contract with the Teamsters for the employees at Reno?

The Witness: That is done by the Nevada Motor

(Testimony of J. W. Wells.)

Transport Association, it is a joint contract, we all participate, all the carriers.

Trial Examiner Myers: You mean it is a master contract?

The Witness: A master contract; yes, sir.

Trial Examiner Myers: And you are a member of this Association?

The Witness: Yes, sir.

Trial Examiner Myers: When I say you are a member, I mean Wells, Inc.

The Witness: That is correct.

Mr. Royster: I am afraid I have no further questions except on the contract.

Trial Examiner Myers: And it has not arrived yet?

Mr. Callister: Are you through?

Mr. Royster: Up to this point.

Mr. Callister: Is it agreeable with the Examiner that I examine?

Trial Examiner Myers: I was going to ask Mr. Apperson if he had any questions.

Mr. Apperson: No questions.

Trial Examiner Myers: Do you have any objections to Mr. Callister going ahead with his redirect?

Mr. Royster: I have none.

Redirect Examination

By Mr. Callister:

Q. Mr. Wells, your attention has been called to the Luning contract in which the machinists were a part of it and you stated, as I recall, that they were a part at one time, is that right?

(Testimony of J. W. Wells.)

A. That the machinists were a part of the contract?

Q. Yes, of the Teamsters contract at Luning.

A. No, the mechanics were under the jurisdiction of the Teamsters.

Q. I see.

On your Luning contract today are they still under the jurisdiction of the Teamsters, that is, a part of the Teamsters' contract, do you know?

A. No, the Teamsters Union withdrew there. I don't know just quite how to phrase it, but they withdrew their jurisdiction over the men at Luning.

Q. What men?

A. The mechanics, when the two, when the Machinists Union came back into the AF of L, that is my understanding.

Q. Now, do you know whether or not the tiremen, greasers and washers were part of that contract at Luning or not?

A. Yes, sir, they were.

Q. Do you know whether—put it this way:

Who has jurisdiction, or do you have a contract with the [203] Teamsters at Luning that incorporates the tiremen, greasers and washers at this time?

A. I am quite sure that they are included at the present time.

Q. In other words, when the machinists were taken out of the contract, that is the mechanics, the tiremen and greasers and washers did not go with the mechanics to the Machinists, is that right?

(Testimony of J. W. Wells.)

A. No, that is right.

Q. Now, Mr. Wells, I am going to show you Respondent's Exhibit 1, and you notice a date on there of December 18, 1944. Could you tell me whether the meeting you had with the Conciliator at which Mr. McShane was present was prior or subsequent to December 18, which is shown there on Exhibit 1, Respondent's?

A. I believe the meeting was December 22nd, which would make it subsequent to December 18th.

Q. Have you ever seen that petition before?

A. Not until yesterday.

Q. Mr. Wells, did you ever receive any correspondence or any information from either the War Labor Board or the Conciliation Division of the Department of Labor that your matter had been certified to the War Labor Board as a dispute?

A. No, it was never a dispute case.

Q. Did you ever hear from the Department of Conciliation, [204] did you ever hear from any Commission of Conciliation of the Department of Labor subsequent to your meeting you referred to of December 22, 1944, in regard to this matter? In other words, did you hear from them again after December 22nd? A. No, we did not.

Q. Did you ever have another conversation with the Unions or anyone regarding this matter at your Reno operation regarding the machinists, after your meeting of December 22nd, 1944?

A. No, I have had no further conversations, to my knowledge.

(Testimony of J. W. Wells.)

Mr. Callister: That is all.

Trial Examiner Myers: What do you suggest now, gentlemen?

Mr. Royster: I have nothing to suggest, Mr. Examiner, but to wait for the arrival of the contract.

Mr. Callister: That is agreeable, Mr. Examiner.

Trial Examiner Myers: You may step down.

(Witness excused.)

Trial Examiner Myers: We will take a short recess.

(Short recess.)

Trial Examiner Myers: Will you take the stand please, Mr. Wells.

J. W. WELLS

resumed the stand and testified further as follows:

Trial Examiner Myers: Have you any further questions, Mr. Royster?

Mr. Royster: Yes, I have, Mr. Examiner.

Trial Examiner Myers: Will you kindly proceed.

Recross Examination

Q. (By Mr. Royster) Mr. Wells, I show you purports to be a collective bargaining contract. Will you tell me the parties to that contract?

Trial Examiner Myers: Is it a contract?

Mr. Callister: I will be happy to stipulate that

(Testimony of J. W. Wells.)

that is a contract, it is a copy but it is a copy of the original dated the 1st day of October, 1944, between the Teamsters Union and this Respondent, Wells, Inc., together with other transportation companies in this area, which is commonly referred to as a master agreement which was negotiated by the Association of which Wells, Inc., is a part.

Mr. Royster: I accept that stipulation, Mr. Examiner.

Trial Examiner Myers: And you, Mr. Apperson?

Mr. Apperson: I do.

Q. (By Mr. Royster) Mr. Wells, can you tell me the date that this agreement was signed?

A. The 26th day of October, 1944.

Q. Can you tell me what unit of employees it covers?

A. No, I cannot. It doesn't state the unit that it covers.

Trial Examiner Myers: Who signed that contract? [206]

The Witness: Harley A. Harmon, Manager, Nevada Motor Transport Association.

Trial Examiner Myers: Signed on behalf of Wells, Inc.?

The Witness: Yes.

Q. (By Mr. Royster) Can you tell me if there is any reference in that contract to greasers or tiremen?

Mr. Callister: We will stipulate there is not. We will stipulate that the contract only refers to line drivers.

(Testimony of J. W. Wells.)

Trial Examiner Myers: Do you accept that, Mr. Royster?

Mr. Royster: Yes.

Mr. Apperson: It is accepted.

Q. (By Mr. Royster) Does that contract, Mr. Wells, provide as a condition of employment that the workers which come within its provisions be members of the Teamsters Union?

Mr. Callister: We will so stipulate that it does.

Mr. Royster: That is agreeable.

Mr. Apperson: Agreeable.

Trial Examiner Myers: You accept the stipulation?

Mr. Royster: We accept the stipulation.

Trial Examiner Myers, and you, Mr. Apperson?

Mr. Apperson: Yes.

Q. (By Mr. Royster) Has Wells, Inc., ever been requested by the Teamsters Union to discharge any greaser, tireman, or washer for failure to obtain or maintain membership in the Teamsters Union? [207]

Mr. Callister: What operation?

Mr. Royster: At Reno.

A. I can't answer that. One of my brothers could probably answer that better. The Reno manager, I would say, could.

Trial Examiner Myers: Who handles the labor relations for Wells, Inc., for Reno?

The Witness: Mr. Bob Wells would handle that. It would come under his supervision.

(Testimony of J. W. Wells.)

Trial Examiner Myers: That is for the Reno Division?

The Witness: Yes, sir.

Trial Examiner Myers: Reno Division is the same as the Reno plant?

The Witness: Yes, sir.

Trial Examiner Myers: Has he always handled the labor relations for the Reno plant?

The Witness: Yes, he is Manager of the Reno operation and he handles the employees. He has jurisdiction of the trucks and equipment working out of here.

Trial Examiner Myers: When was Wells, Inc., first formed?

The Witness: 1936.

Trial Examiner Myers: Regarding this contract that you just were discussing, when does that contract expire?

The Witness: October. "This agreement shall be in effect on and after October 1st, 1944, and remain in force and effect until October 1st, 1945, and shall thereafter automatically [208] renew from year to year except that in case of either party desiring to change or terminate . . . will submit their notice thirty days in writing . . ."

Mr. Callister: It is a year contract with the automatic renewal clause.

Mr. Royster: No further questions.

Trial Examiner Myers: Mr. Apperson?

Mr. Apperson: No questions.

Trial Examiner Myers: Mr. Callister?

(Testimony of J. W. Wells.)

Mr. Callister: I have, Mr. Examiner.

Redirect Examination

Q. (By Mr. Callister) Mr. Wells, when you refer to Mr. Bob Wells having charge of labor relations, is that subject to your supervision and so forth? A. Yes, that is correct.

Q. Who signs the contracts for your labor relations, in other words? A. I do.

Q. Mr. Wells, I hand you herewith what is purported to be an agreement dated the 3rd day of July, 1943, between Wells, Inc., and the Teamsters Union, signed by yourself and H. A. Anderson, and ask you if you have seen that before.

A. Yes, sir, I have.

Q. And that is a contract affecting what operation, Mr. Wells? [209]

A. This is affecting our Luning operation of Wells, Inc.

Q. Mr. Wells, will you tell us what job classifications this Luning contract affects?

A. Mechanics, grease monkeys, drivers on small trucks, helpers and dumpers.

Q. In other words, Mr. Wells, at your Luning operation your contract provides that the Teamsters, which is the same in Reno, Mr. Harry Anderson, has jurisdiction of your grease monkeys, is that right? A. That is correct.

Q. Can you tell me who has jurisdiction of your grease monkeys in Reno, if you know?

A. Well, I am a little confused myself. I don't know exactly who has jurisdiction, whether the

(Testimony of J. W. Wells.)

Machinists are going to claim them or the Teamsters are going to claim them. That is what I believe the purpose of one of these things is, to determine the unit of who represents what men. In their contract the Teamsters don't call for jurisdiction of the grease men.

Q. Now, you are referring to the contract in operation between the Teamsters and yourself?

A. That is correct. The Machinists are out signing up the grease men to belong to their union. We have another contract here that is in operation at Luning, Nevada, and the Teamsters claim jurisdiction there. [210]

Trial Examiner Myers: You are referring to the July, 1943, contract?

The Witness: At Luning, Nevada, yes, sir.

Q. By Mr. Callister) As a matter of fact, they do have jurisdiction, that is the contract is entered into with them in which the greasers are a part of it, is that not correct? A. That is correct.

Q. Now, is this the same contract—I am now referring to Luning—that you stated previously in your testimony that you had a contract covering your mechanics as well as the greasers and teamsters, is that correct? Is this the same operation?

I will put it this way, Mr. Wells—previously, this morning you testified at Luning at one time your Teamsters contract included mechanics, you remember? A. That is correct.

Q. Then after the Machinists came back into the

(Testimony of J. W. Wells.)

AF of L, the mechanics were taken out of the contract, you so testified, did you not?

A. That is correct.

Q. Was that the same operation as this operation at Luning which I have shown you the contract dated the 3rd day of July, 1943, in which now the greasers continue to remain in the contract?

A. That is correct. [211]

Q. So I assume that what transpired was that first you had a contract at Luning covering your mechanics, greasers, monkeys, what they call grease monkeys, and line drivers and then the Machinists came and took jurisdiction of the mechanics, but left the greasers with the Teamsters, is that right?

A. At least the Teamsters gave up jurisdiction of the mechanics.

Q. But not the grease monkeys?

A. That is right.

Q. Now, I think you stated you had a conversation with Mr. Anderson in regard to grease monkeys. You asked him what his position was, is that right?

A. That is correct.

Q. What did he tell you?

A. Told me that the jurisdiction of the Teamsters Union were grease monkeys, parts men, dock helpers, tire men, washrack men, I believe that is essentially the main part.

Q. In respect to your Reno operation, up to this time have you ever recognized any labor organization as representing your grease monkeys, as they are termed, washers or greasers, or tiremen?

(Testimony of J. W. Wells.)

A. No, I don't believe we ever have.

Mr. Callister: That is all.

Mr. Royster: That is all. [212]

Trial Examiner Myers: You are excused. Thank you very much.

(Witness excused.)

Mr. Callister: Now, Mr. Royster, you stated you want to have Mr. Howard Wells return, because you said you want to submit information with regard to a Form 10.

Mr. Royster: Your questioning of Mr. Joe Wells made it unnecessary for me to ask Mr. Howard Wells any questions. The point I had in mind has been covered.

Mr. Callister: So there will be no question about it, in the Reno operation no Form 10 has ever been filed for the Reno operation. I think you had that question in mind and we have him here to testify if you so desire.

Trial Examiner Myers: Will you call your next witness, please?

Mr. Callister: We have nothing further, Mr. Examiner, we rest.

Trial Examiner Myers: Has the Union any witnesses it wishes to call?

Mr. Apperson: No further witnesses.

Trial Examiner Myers: Have you any rebuttal witnesses, Mr. Royster, whom you wish to call?

Mr. Royster: Mr. Callister has a document which he brought here on my request and I would

like to take a look at it first and then I can answer that question. [213]

Trial Examiner Myers: Very well, we will take a short recess while Mr. Royster examines the document.

(Short recess.)

Trial Examiner Myers: On the record.

Mr. Royster: Mr. Benton.

JACK BENTON,

a witness recalled by and behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Royster) You are the same Jack Benton who testified yesterday at this proceeding?

A. Yes, sir.

Q. Mr. Benton, you testified concerning your discharge by Wells, Inc., on January 31, 1945. Did you receive what is known as a release at the time or subsequent to your discharge?

A. Yes, sir.

Trial Examiner Myers: You mean an availability certificate?

The Witness: It is a separation slip, I think they call it, or something like that.

Q. (By Mr. Royster) Is that the type of slip that you take to the United States Employment Service Office? A. Yes, sir. [214]

(Testimony of Jack Benton.)

Q. Do you recall what was written on the slip when it was given to you by Wells, Inc.?

A. Yes, sir.

Q. Will you tell us what was written on it?

Mr. Callister: Just a minute. Objected to on the ground that it is not the best evidence. We should have the slip.

Mr. Royster: I will call upon you to produce it.

The Witness: They have a copy.

Mr. Callister: We will withdraw our objection. You may proceed.

Trial Examiner Myers: Will the Reporter please read the question to the witness?

(Question read by the Reporter.)

A. Discharge for lack of cooperation.

Mr. Royster: That is all.

Trial Examiner Myers: Any questions, Mr. Callister?

Cross Examination

By Mr. Callister:

Q. Mr. Benton, did you make any protest to the Company when you read that on your discharge slip?

A. No, sir, because I was discharged, I deserved it.

Q. You did deserve it?

A. If it was I was discharged, and that is the kind of slip I wanted.

Q. That is the kind you wanted?

A. I never resigned. I was discharged. [215]

Q. You know that there are other reasons why

(Testimony of Jack Benton.)

you were discharged, in addition to the fact that you would come to the shop——

Mr. Royster: (Interposing) Just a minute, Mr. Callister.

Mr. Callister: Let me finish and then you may make your objection.

Q. (By Mr. Callister) Mr. Benton, is it not true that you had been warned several times about drinking on the job, is that not correct?

A. I never drank on the job.

Q. You never were warned?

A. No, sir, I never drank on the job.

Trial Examiner Myers: Will you answer the question?

The Witness: No, I never.

Trial Examiner Myers: Any questions, Mr. Apperson?

Mr. Apperson: No questions.

Trial Examiner Myers: Any redirect?

Mr. Royster: No questions.

Trial Examiner Myers: You are excused.

Mr. Callister: Mr. Benton, just a moment, please, just one more question.

Q. (By Mr. Callister) Mr. Benton, do you ever recall coming down to the Wells, Inc. just prior to your discharge after you had been drinking rather heavily, or drinking, and [216] starting to cause a rumpus around the place?

A. I don't recall it, no.

Q. You wouldn't say you didn't would you?

A. I did not.

(Testimony of Jack Benton.)

Q. You didn't do it? A. No.

Mr. Callister: That is all.

Mr. Royster: That is all.

Trial Examiner Myers: You are excused, sir.
Thank you.

(Witness excused.)

Mr. Royster: Now, Mr. Examiner, I understand it is agreeable to counsel——

Mr. Callister: (Interposing) As to that, I am going to object on materiality, but I will stipulate that is the Constitution and By-Laws of the Machinists Union, of course.

Mr. Royster: Well, I offer the Constitution of the Grand Lodge, District and Local Lodges of the International Association of Machinists in evidence for the purpose of showing the jurisdiction claimed by the International Association of Machinists as shown on pages V through X of that document.

(Thereupon, the document above referred to was marked Board's Exhibit No. 9 for identification.)

Mr. Callister: Well now, Mr. Examiner, we object to the introduction of the same, but we will explain our objection. [217]

Trial Examiner Myers: Proceed.

Mr. Callister: We will stipulate that this is the Constitution of the International Association of Machinists. That is not our objection. We object to it for the purpose for which it is introduced on the ground that the same is immaterial, incompetent

and irrelevant. We think that any union may take jurisdiction of anything they want. For illustration, the Teamsters take jurisdiction of office workers and everything else different from what their primary object was, but the question here is not what they can do, but what did they do. We think the mere fact they have jurisdiction of everybody is not binding on the facts in the case and is therefore immaterial, incompetent and irrelevant.

Mr. Royster: The purpose of offering it is of course to bring into sharper definition the unit set forth in the contract between Wells, Cargo, Inc. and the International Association of Machinists covering the operation at Las Vegas, and the Examiner will recall that there has been testimony that a copy of that Las Vegas contract was shown to the respondent here and used, or attempted to be used at any rate, as a basis for negotiating a contract covering the Reno operation.

Mr. Callister: Mr. Royster, I do not get your point. There is no question that the Machinists Union can do as they [218] please and get anyone in that they want. You have stipulated here in open hearing that the union appropriate for the purpose of collective bargaining is only mechanics. Now, what bearing this can have on it I do not see, and we have already limited jurisdiction of the Machinists in this particular case because we have stipulated that the unit here should only be mechanics.

Mr. Royster: Well, to be a little more precise about it, perhaps we haven't limited their juris-

diction, we have agreed as to what constitutes the appropriate bargaining in the Reno shop.

Mr. Callister: That is right, they have jurisdiction over every trade in the world, but that is not material to us. I think the Machinists may come in and be bargaining agent of the Teamsters, if the Teamsters so designate them.

Trial Examiner Myers: I will overrule the objection and receive the book in evidence and ask the Reporter to mark it Board's Exhibit No. 9.

(The document heretofore marked Board's Exhibit No. 9 for identification was received in evidence.)

Mr. Royster: Mr. Examiner, an executed copy of Board's Exhibit 6 was placed in evidence.

Trial Examiner Myers: Is that the contract?

Mr. Royster: That is the contract. Mr. McShane has arranged for the preparation of copies of that instrument to [219] give to the Reporter. I understand that he expects them to be finished about noon and when they are completed I would like permission now to put in two of the copies and withdraw the executed original.

Trial Examiner Myers: Very well, you may do so, there being no objection.

Have you any further rebuttal?

Mr. Royster: No further rebuttal.

Trial Examiner Myers: No other witnesses you want to call, no other evidence you want to submit?

Mr. Royster: No, sir.

Mr. Callister: Mr. Examiner, this is a matter that I am a little in doubt as to, but I am going to

ask the question anyway, if you will bear with me and give me your indulgence.

Trial Examiner Myers: Certainly.

Mr. Callister: In the complaint——

Trial Examiner Myers: What paragraph, sir?

Mr. Callister: I am referring to paragraph 4. It reads that:

“All mechanics, mechanic helpers and greasers employed by the Respondent at its shop in Reno, Nevada constitute a unit appropriate for the purposes of collective bargaining.”

Now, apparently without any question the Union has given the Board information to base this allegation on. I do not [220] notice it in the charge. I do not know whether it is within the rules and regulations of procedure here to find out who gave that information to the Board. We are concerned with it, frankly, because testimony here of the Union has been consistently that they had a unit defined different from that which appears in paragraph 4 and the reason I am concerned is this, Mr. Examiner: is the fact that this thing is serious. In other words, my point being that when information is given to government agencies it should be realized that it is important and should be correct.

Now, I think that we are entitled to know. I may not be, but that is our thought, and I ask the question, Are we not entitled to know who gave this information to the Board? It shouldn't be privileged because it is set forth in their complaint. If it is the Union, which I assume it is, I would like

to know how they can testify here one thing and then give certain information of another.

Is that error that the greasers are in here, or is it based upon information given to the Board?

Mr. Royster: It happens that I am not at all adverse to giving Mr. Callister that information. I do not believe he is entitled to it, I do not believe he is entitled to go behind the complaint and divulge these reasons other than by examination of witnesses, why certain allegations may appear in the complaint. As a matter of fact, the complaint may make [221] any number of allegations which the Board may fail to substantiate.

Trial Examiner Myers: Do you want to give him the information?

Mr. Royster: I would be glad to.

Trial Examiner Myers: On or off the record?

Mr. Callister: On the record.

Mr. Royster: I talked first to Mr. McKay, Business Representative of the International Association of Machinists.

Mr. Callister: Who has testified in this hearing?

Mr. Royster: That is right, and he supplied me with certain designations which are in evidence as Board's Exhibit 2(a) through (k), I believe. Then Mr. Callister, you furnished our office with a payroll, with several payrolls. I took these designations and compared them with the payrolls, and finding that some of the designations were from greasers, I assumed that the Union contemplated including greasers in its appropriate unit, and when I drew the complaint I so phrased it.

Mr. Callister: Well, then, you have never had a discussion with any of the Business Representatives of the Machinists in which they contended they represented the greasers?

Mr. Royster: Well, now, that is a little bit difficult to answer. They have told me that they do represent greasers. [222] They admit them to membership and do represent them for purposes of collective bargaining.

Mr. Callister: And did in this case?

Mr. Royster: Well, they haven't represented anyone for purposes of collective bargaining.

Mr. Callister: They attempted to, of course.

Mr. Royster: The testimony in the record shows that.

Mr. Callister: That is all I want.

Mr. Royster: It shows that they did.

After the drawing of the complaint, I talked to Mr. Apperson, Grand Lodge Representative of the Internation Association of Machinists, and he told me that he did not understand that greasers should be included in the unit.

Mr. Callister: What is Mr. Apperson?

Mr. Apperson: Grand Lodge Representative.

Mr. Callister: But you did not participate in negotiations at all, did you, Mr. Apperson?

Mr. Apperson: No.

Mr. Callister: That is all I have, Mr. Examiner. I thank you, and I thank Mr. Royster for that information.

Trial Examiner Myers: Have you any other witnesses you wish to call?

Mr. Callister: I may have just one question further.

Mr. Wells, I just have two questions, if I may.

Trial Examiner Myers: Which Mr. Wells? [223]

Mr. Callister: Joe Wells.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Mr. Callister: We will forget all of it except one question, there is one thing I did not clear up in Mr. Wells' examination.

J. W. WELLS

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Callister) This is the same J. W. Wells who heretofore testified, is that correct?

A. Yes.

Q. Mr. Wells, who has complete charge or supervision of all labor relations in your organization of Wells, Inc? A. I do.

Q. Do you permit anyone to negotiate labor contracts without either you being present or your approval?

A. No, I do not.

Mr. Callister: That is all.

(Testimony of J. W. Wells.)

Mr. Royster: No questions at all.

Trial Examiner Myers: You are excused. Thank you.

(Witness excused.) [224]

Trial Examiner Myers: Have you any other witnesses?

Mr. Callister: I have none, Mr. Examiner.

Trial Examiner Myers: Mr. Apperson?

Mr. Apperson: No other witnesses.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: No other witnesses, Mr. Examiner.

Trial Examiner Myers: Have you any other evidence you wish to submit, Mr. Callister?

Mr. Callister: No, I do not.

Trial Examiner Myers: Mr. Apperson, any other evidence you wish to submit?

Mr. Apperson: No, I have not.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: No other evidence, Mr. Examiner.

Trial Examiner Myers: Very well, any motions, gentlemen?

Mr. Royster: I wish to move at this time, Mr. Examiner, to conform the pleadings to the proof in the matters of names, dates, places, and to variance in material matters.

Trial Examiner Myers: Any objection?

Mr. Callister: I may say this, Mr. Examiner, it is not specific, so indefinite, I don't know what he is referring to. I assume this is ordinarily done in these types of hearings. My point is I think it is so indefinite I think it is objectionable on the ground.

Trial Examiner Myers: It is just as Mr. Royster says, just to correct typographical errors.

Any objection?

Mr. Callister: No, and I imagine in order to be in the same situation I will make the same motion.

Trial Examiner Myers: He said for the pleadings. The motion is granted without objection.

Any other motions?

Mr. Royster: Mr. Examiner, I also move to strike from paragraph IV of the complaint the classification "greasers".

Trial Examiner Myers: Any objection?

Mr. Callister: Yes, there is, Mr. Examiner. I object to it on the ground that there is already proof that claim was made for greasers in this unit and that there is no basis or reason to strike out matters that now appear to not conform to their theory of the case.

Trial Examiner Myers: Well, I will deny the motion.

Any other motions, Mr. Royster?

Mr. Royster: No further motions, Mr. Examiner.

Trial Examiner Myers: Have you any motions, Mr. Apperson?

Mr. Apperson: No motions, Mr. Examiner.

Trial Examiner Myers: Have you any motions, Mr. Callister?

Mr. Callister: No, I have not. Except this, Mr. Examiner, [226] whether it became a part of this pleading or not, and I will have to submit that to you for your decision, in view of what has transpired here—no, I withdraw that, because as I un-

derstand it you do not now—Mr. Royster, that is, the Board, does not contend that the Machinists claim greasers in the unit any more because we have stipulated the unit, so that takes care of what I had in mind.

That is all I have.

Trial Examiner Myers: Very well.

Will you proceed with your oral argument, Mr. Royster?

ORAL ARGUMENT ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD

Mr. Royster: I will address myself first, Mr. Examiner, to the 8(5) aspect of this case. You will recall that the testimony of the Board's witnesses set forth a meeting on May 16, 1944, at Las Vegas or near Las Vegas, Nevada, with Mr. J. W. Wells, who has testified that he is in charge of labor relations for Wells, Inc. and that all labor agreements must either be negotiated by him or with his approval. At that time the Union represented to Mr. Wells that it represented a majority of the employees in the shop at Reno, Nevada and suggested that a contract be signed covering the employees and offered as a basis for discussion the contract which had just been signed covering the Las Vegas operation.

Now, the testimony of the Board's witnesses is that at that time there was no question by Mr. Wells that the [227] Union represented a majority of

those employees or the fact they were seeking to represent employees in an appropriate bargaining unit. Mr. Wells, did, however, not enter into an agreement with them at that time and the meeting closed with, I think the inference is permissible, with the general understanding that these negotiations would resume at a later date.

Now, Mr. McShane testified that during the ensuing months he made attempts to get in touch——

Trial Examiner Myers: Instead of reviewing the entire testimony, just confine yourself to what your contentions are.

Mr. Royster: All right.

The contention of the Board is that on May 16, 1944, the Union represented a majority of the employees of the Respondent in its Reno shop in an appropriate unit and that at that time there was in effect a refusal to bargain which has been borne out by the following events:

That Mr. Wells did not in good faith at that time intend to bargain with the majority representative of the employees in their appropriate unit in his Reno shop, and that at no time since that date has he evidenced a willingness so to do.

Now, there has been testimony which the Examiner will recall about the numerous attempts to have meetings. On [228] October 5, 1944, again the Board contends, and a check of the designations submitted under Board's Exhibit 2(a) through (k) against the appropriate payroll records will show that the Union did, on October 5, 1944, represent a majority of the employees in the Reno shop, and in

fact Mr. Wells, upon looking at these designations, said, "Hell! You've got everybody on there but me."

Now, again, the unit does not appear to have been in dispute. Mr. Wells said that he noticed on one of the designations the name of Falk and that Falk was a greaser. Now, it happens, and the payrolls will show, that Mr. Falk was not employed by Wells, Inc. at that time, his employment having ceased some time during the summer. Although Mr. Wells said that he was somewhat disturbed by the finding that the Union was signing up greasers, he did not confide to the Union that he thought perhaps they were exceeding their jurisdiction or that to attempt to bargain for the greasers might lead to a jurisdictional dispute with the Teamsters, but it does appear that he thereafter counseled with the Teamsters' representative here in Reno and even after that counseling he testified he is still unsure whether greasers come within the jurisdiction of the Machinists or the Teamsters.

The meeting of October 5th again resulted in no agreement. There was a discussion of wages. Mr. Wells objected, [229] according to the testimony of the Board witnesses, to establishing a classification of Diesel Machinist Specialist at the Wells shop. He objected to the overtime provisions in the proffered agreement and the meeting closed with an understanding or an agreement, according to Mr. McShane, that negotiations would be resumed in approximately ten days. Well, there was no meeting within ten days or thirty days, and the Union

called in a Conciliator. The testimony will be recalled that the Conciliator went to the Company's office and that he was unable to arrange a meeting at that time.

Finally, however, on December 22, 1944, the Conciliator and the representative of the Union and Mr. Joe Wells, Mr. Howard Wells, met in the office in Reno.

Mr. McShane testified that at the outset of the meeting, to my recollection, the question of the bargaining unit was raised and that Mr. McShane stated that the bargaining unit had not changed, that it was still the same unit that they claimed to represent in October and was to include all mechanics, mechanic helpers and apprentices in the engine shop, I suppose you might term it, and the body shop. It does not appear, according to the testimony of the Board's witnesses, that there was, during the early portion of this meeting, any question raised with respect to the representative status of the Union among the employees in the unit which [230] it claimed appropriate. However, as the meeting progressed, Mr. Howard Wells left and then Mr. Joe Wells left and were absent from the meeting for some considerable period of time. When they returned, one of them announced, I have forgotten which one, that he had talked to some of the employees in the shop and that some of them did not want the Union to represent them and that therefore he thought there should be an election.

Now, Mr. Examiner, that is the first time that the Company raised the question of majority, since

it had been shown the designations on October 5th, and I submit that it was too late for the Respondent then to claim that the Union did not represent a majority, because prior to that time it had entered into negotiations concerning wages, hours and working conditions which had for their natural result the signing of a collective bargaining agreement.

The interrogation of the employees by the Wells Brothers, which one of them I have forgotten, is of course a violation of Section 8(1) of the Act. The Employees have the right to be free from any interrogation under Section 8(1) or restraint or coercion.

Now, also during this meeting of December 22nd, there was discussion of Jack Benton, or the testimony is that the Respondent attributed the union membership in the shop to the activities of Jack Benton. There is no testimony but that Jack [231] Benton was an efficient employee, and I submit the fact that he received periodic and substantial wage increases as persuasive of the conclusion that he was a good and valuable employee. He did make the mistake, however, of wearing a union button around the shop; he did make the mistake in a conversation with Bob Wells of sticking up for unions; he further made the mistake of protesting the exclusion of McKay from the shop when a representative of the Teamsters, according to Benton's testimony, was permitted free access. And so, without warning, on the 31st of January, 1945, he found himself separated from the payroll.

Now, I have touched just the high spots in the

evidence, Mr. Examiner, but I think it all adds up to three conclusions:

1. That the Respondent has interfered with, restrained and coerced its employees in the exercise of their rights under Section 7 of the Act;

2. That it discharged Jack Benton because of his union membership and activity on behalf of the Union; and

3. That it has refused and does now refuse to bargain with the majority representative of its employees in an appropriate bargaining unit.

Trial Examiner Myers: Mr. Callister.

ORAL ARGUMENT ON BEHALF OF THE RESPONDENT

Mr. Callister: Mr. Examiner, Mr. Royster, and Mr. Apperson, I think that the Board here has, the last two days, [232] by the introduction of certain documents as exhibits, definitely shown a situation different from what their witnesses have attempted here to testify to and certainly it has gone against the Board's contention. For illustration, they contend that on May 16th that when they completed the Wells Cargo contract that Mr. Wells agreed upon certain provisions of the contract, and yet the Union, by their exhibit of a letter dated August 8th, 1944, states that "We will submit proof to you of our representation."

Now, I have been in the labor practice for the past ten years and it is common knowledge that gentlemen who have represented the union and who

have testified here are experts in their business; they know all the angles; they know more than the average employer about labor relations in the way of negotiating contracts, and I cannot believe that any labor organizer or representative is going to take the position that after he starts negotiating a contract he is going to submit proof that he represents them. That is not done.

Now, we come to the meetings subsequent to the August time in which we have the Union getting these authorizations. Now, the Government has contended that a unit was described on May 16th and at subsequent times, and yet all through this proceeding, all through this period of time from May 16 to past December of 1944, we had this Union, the Machinists still getting greasers, tiremen, even shovel operators in [233] their Union as representing them as a unit. They would not get these individuals to have the Machinists represent them if they did not have in mind that they were going to be a part of the unit. That is not done.

Now, it is inconceivable to me that any reasonable group of men can contend that there has been a unit agreed upon previously to yesterday morning, in view of the documents here introduced. I call your attention to that exhibit Respondent's 1, which shows the date of December 18th, where the Union, the Machinists, sends another petition out in which they are designated the bargaining agency. Never in my experience, and I have negotiated many contracts, have I ever seen a situation where a union is contending that I have entered into an agreement

or recognized them and then gone out and got a petition. That isn't done. Particularly is it not done in getting individuals different from the unit which they have contended they have already agreed upon. That is not sense in my judgment, and I think that the documents, Mr. Examiner, here definitely prove a contention opposite from what the Government is now proceeding to attempt to have this Examiner rely upon.

Now, we even have an authorization from Mr. Jansen, who testified here as a greaser, was a greaser on December 25th. Certainly that is evidence enough that a unit had never been agreed upon because Mr. Wells definitely testified [234] and there is no contradiction in the evidence here, he did never recognize anybody for greasers and they attempted to put greasers and other units in there.

Now, we know this, Mr. Examiner: that the Teamsters, and it is common knowledge, ordinarily takes in greasers, washers, tiremen and so forth. Mr. Wells knew that it was in his contract at Luning. He knew Teamsters claimed that. It is only natural, he did the natural thing in finding out if the Teamsters were going to claim the greasers and helpers. He didn't want a jurisdictional dispute. That is what he was trying to avoid because he knew immediately after talking to Mr. Anderson if he had gone ahead and recognized the Machinists for the greasers he was in trouble. Mr. Anderson was here at this hearing yesterday and I am con-

vinced had the situation not been as it was, he would have come in here and protested.

Trial Examiner Myers: Well, at that meeting of December 22nd, the Company had already entered into an agreement with the Teamsters covering the greasers, did they not, or just line drivers?

Mr. Callister: Just line drivers. That was a master contract, but the Luning contract shows that there were greasers. But the contract at Reno was only line drivers.

I would like to come to Mr. Benton's testimony and his situation, which ties into this other. I am convinced that [235] Mr. Benton who, in his job classification was not a part of this unit but which had been stipulated here was a foreman, who did hire, who did fire, and who without any question under the interpretations of this Act which we are confronted with today could bind the Company. I am further convinced, and I have so advised Wells, I think any lawyer would, that a foreman such as Mr. Benton, participating as he did in getting men to join a particular union, would create an unfair labor practice on the part of this company as far as the Teamsters are concerned. In other words, the Teamsters in my judgment have ample proof here today to file an unfair labor practice charge against this company because of the activities of Benton. How the Government can come in and say that we have discharged Mr. Benton because of union activities, showing that that is unfair labor practice, I cannot understand. As a matter of fact, I have advised every client I have

that their foremen should not participate for or against any union because they bind them, particularly if there is another union organizing or having anything to do with it. That is the case here.

Now, to have this company charged with an unfair labor practice because of Benton's activities in this case certainly is inconsistent in my judgment because we are absolutely liable and open, wide open, as against a charge by the Teamsters because there is no contradiction here that Mr. Benton [236] by his influence as a foreman, we know that if a foreman belongs to a union, has a right to hire and fire, he can influence the men either to join or not to join, and the minute he even expresses his opinion the men would be afraid of not being promoted or not being given the proper type of job will do what that foreman says, and I think there is evidence here that the Teamsters, if they wanted to file charges against us, could do so in a minute.

So, in summary, I may say this to you, Mr. Examiner: in view of what has taken place here there are only two conclusions to draw. I am not going into details under the evidence. Mr. Wells certainly never did agree to the unit. By the evidence of the Union's activities, they did not themselves. And secondly, Mr. Benton could never claim he has been wronged by this Company. As a matter of fact, I think the Company should be chastised and should be reprimanded for its negligence in not discharging him. If I had known about it, I certainly would have advised the Company to discharge any foreman who is for or against any labor

organization. He must be neutral because he is the Company's agent, and I think the Company did more than they should have done by keeping Mr. Benton on as long as they did. That is not the basis for the discharge. The fact remains Mr. Benton testified he did not want to be foreman any longer, I assume because he thought he couldn't participate in union activities. Certainly [237] they have a right to have him laid off if he does not want the job classification they desire him to have; they have a right to do what they please.

There is one other point I think we must reason from the facts here and that is this: in my ten years experience and particularly the last two years I have had contact with this type of situation. I am a member of the War Labor Board at Denver. I have contact with the Conciliation Division and it's fundamental that a Conciliator of the Department of Labor, when he comes into a controversy, if the union has been recognized, even though they have both agreed to one provision he immediately certifies it as a dispute. I have never seen it otherwise. In this case, and we further know that the War Labor Board will not determine jurisdictional disputes, that is why they are not certified to the War Labor Board where there is a question as to jurisdiction. We, as the War Labor Board, will not take jurisdiction of it because we cannot determine the unit, we cannot determine who has the right to represent them, we refer it back to this Board.

Now for that reason I am convinced that from

the activities of the Conciliator himself in not doing anything further with it, not certifying it to the War Labor Board, is prima facie evidence that he was convinced that no unit was agreed to, that no designation of a representative had been agreed to by the Company, because if it had been, if there had been a [238] representative here designated, if there was a dispute, then he was certainly negligent in not certifying it and I know Mr. Curtin and he does not do those things.

Trial Examiner Myers: It is undisputed that the Company did not recognize the Machinists here as the representative of anybody, is it not?

Mr. Callister: That is our position. We did not recognize them. My position is that had the company recognized them as a collective bargaining agency, if Mr. Curtin was convinced of that, he would have certified it without any question because I think that is prima facie evidence that if a Conciliator comes in, certainly he does that one thing. Now, knowing conciliators as I do, if you recall, I asked Mr. McShane I think it was if he had given Mr. Curtin, the Conciliator, the proposed contract that he had submitted to the Wells. No. Something unheard of. I have never seen a conciliator come into a meeting yet that he does not say "All right, what have you agreed upon? What is your proposal? What is it all about?" He didn't get that here."

Second, and then I am through, Mr. Examiner: never in my experience have I ever seen a labor organization claiming to represent the men without giving at some stage of the proceedings a contract

that fits the operation or fits the situation that they have in mind. In other words, the contract they claim to have proposed to Mr. Wells has Diesel Mechanic, [240] which has nothing to do with it, has nothing about bodybuilders, has nothing about the assistants to bodybuilders, so that I think there is only one conclusion to draw, Mr. Examiner, and that is as far as Wells, Inc. is concerned that they have never recognized the union because the unit was never agreed upon and certainly I do not see how you can bargain with a labor organization without first knowing the group you are bargaining for; and secondly, there has certainly been no unfair labor practices upon the part of this Company in respect to discrimination or disparaging a union and in respect to their contact toward Mr. Benton, because Mr. Benton certainly has put this company in a position where the Teamsters can lodge a charge with this Board against them because there is no question that Mr. Benton was actively participating.

Thank you. I appreciate your indulgence, Mr. Examiner, and your courtesy during this hearing. Thank you, Mr. Royster, for your gentlemanly conduct, and you, Mr. Apperson.

Trial Examiner Myers: Do you wish to say anything, Mr. Apperson?

Mr. Apperson: No, not at this time.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: I would like to touch very briefly on one or two points. The first, Mr. Examiner, is this: that the fact that the Union secured desig-

nations from greasers, one [240] of which I believe Mr. Callister stated is dated on the 25th of December, 1944, is of no particular materiality here. It is true we get confused perhaps when we talk about bargaining units. Ordinarily in the parlance of the Board a bargaining unit is one which the Board can force an employer to bargain with respect to. Now, an unrepresented employee may not properly be included in a particular bargaining unit but that does not mean that he must refrain from designating a labor organization to represent him. Nor does it mean that the labor organization may not go to the employer and say, "See here, we represent this group of employees. True, they do not come within what might be termed an appropriate bargaining unit. True, we may not perhaps through the offices of the National Labor Relations Board force them to bargain with us on behalf of these employees, but we represent them and we want to bargain for them."

Now, as to Jack Benton: the Respondent of course does not contend that Benton was discharged for his union activity, although the Board does. The point there is as I understand it, this:

A supervisory employee of course binds the company, but not in all circumstances. The Board has found, and I believe will continue to find that isolated union activity on the part of a supervisor which is contrary to the established policy of the company, of which the employees have full knowledge, is [241] not such conduct as is attributable to the employer.

Now, there is a case which bears very closely to that point, Houston Shipbuilding Case, published in volume 56 of our Reports. I am sorry I do not know the case number. Now, again, a supervisory employee is not barred by the Act in engaging in union activity per se. It is only when he carries with him in his union actions the force and the prestige and the power of the employer that such activity is frowned upon. In this situation, and by that I mean the Wells, Inc. case, the attitude of the Wells company toward the International Association of Machinists was well known, I believe the testimony will show that it opposed the Machinists in its bargaining efforts, that slighting remarks were made to Benton at least about the fact that he wore a union button; the business agent was barred from the shop, so no employee would gather from the fact that Benton was a union member and Shop Steward that that met with the approval of the Company. Quite the contrary.

There is a case which is quite similar to this in that respect, the Muskegon Dock and Fuel Company case reported in volume 58, and again I do not know the case number and it is my recollection that the Soss Manufacturing case, which is a more celebrated decision, also holds to the same theory, that the supervisory employee may be discharged—if a supervisory employee under certain circumstances is discharged for engaging [242] in union activities, such discharge is in violation of Section 8(3) of the Act.

Mr. Callister: I may say in answer to that, when

a man has power, which Mr. Benton himself so testified, to discharge and hire without reference to the company and employees knew that and he actually had done that, certainly it cannot be said that he comes within, and I am familiar with the cases Mr. Royster cites, and there is no question as to his interpretation of the law in that respect—however, certainly I do not see how it can be said that Mr. Benton's case comes within that, because I am here to say definitely in my judgment that was this an unfair labor practice on the part of the Teamsters for the activities of Benton in trying to get these men to join the Machinists as against the Teamsters, I think without any question we would have an unfair labor charge sustained against us.

Trial Examiner Myers: What do you want me to do, make a finding in this case?

Mr. Callister: No, but I am arguing I do not see the Government can blow hot and cold. In other words, Mr. Benton without any question, as a supervisor or with the right to hire and fire, binds the company and I think as a matter of fact if the Company ever permits men of his job classification to participate they are opening themselves wide open, so I do not think they applied the cases you have. That is all I [243] have.

Trial Examiner Myers: Anybody else?

Mr. Royster: Nothing for the Board.

Trial Examiner Myers: Anything else you gentlemen want to take up with me before I declare the hearing closed?

Mr. Callister: I may have one question. Do you desire any briefs to assist you?

Trial Examiner Myers: That is up to you. Do you wish to file a brief?

Mr. Callister: I would like this reservation if I may, Mr. Examiner: I would like to have the time usually granted to Respondents to file, and in the event I do not, I will let you know within the next five days, whether I desire to or not, but I would like to have the customary time to do so.

Trial Examiner Myers: All right. Anybody else wish to file a brief?

Mr. Royster: The Board will not file a brief.

Mr. Callister: I may say this, Mr. Examiner, if I can be of assistance to the Board, I will think it over and if I can I will be glad to. I know how some briefs are treated on the Labor Board, many times we get them and they go in the waste basket, they are not necessary. I want to be of assistance, not just for the purpose of writing one.

Trial Examiner Myers: I can assure you I will be pleased to receive a brief and I will read it. [244]

Mr. Callister: I am referring to myself. I have received them many times myself and many times when we feel there is no necessity to get one, many times I have told them I did not want to get one, because I did not think it was necessary.

Trial Examiner Myers: The issues are pretty well defined here.

Anything else you gentlemen want to take up with me before I call the hearing closed?

Mr. Royster: Yes, Mr. Examiner, this comes at

an awkward place in the record, but I have overlooked——

Mr. Callister: (Interposing) Can I be of assistance in stipulation?

Mr. Royster: Yes. Board's Exhibit 4, yesterday I asked Mr. Callister if he would be prepared to tell me which, if any, of the employees listed on the payroll were terminated between December 15th and December 22nd and if there were any hirings during that period among the shop employees.

Mr. Callister: I obtained that information. I neglected to give it to you. I am sorry. There was only one employee whose designation changed, Mr. Jackomiet, who went into the Army prior to December 22, 1944.

Mr. Royster: Mr. Chairman, I have this stipulation to propose: It is hereby stipulated among counsel for the Respondent, representative of the Union and counsel for the Board that Board's Exhibit 4 is an accurate list of the employees [245] of Wells, Inc. as of December 22, 1944.

Mr. Callister: We will so stipulate.

Trial Examiner Myers: You, Mr. Royster?

Mr. Royster: I do so stipulate.

Trial Examiner Myers: You, Mr. Apperson?

Mr. Apperson: The Machinists so stipulate.

Trial Examiner Myers: Is there anything else to take up before I declare the hearing closed?

Since there is nothing further, I will declare the hearing closed.

(Whereupon, at 1:30 o'clock p.m., Saturday, August 25th, 1945, the hearing in the above-entitled matter was closed.) [246]

Before the
National Labor Relations Board
Case No. 20-C-1306

In the Matter of:

WELLS, INC.,

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS

Reno, Nevada
August 24, 25, 1945

BOARD EXHIBIT No. 2(a)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, 10-4, 1944.

/s/ E. J. STAATS

Witness:

/s/ MELVIN JAKOMIET

BOARD EXHIBIT No. 2(b)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining

to wages and working conditions.

Date, October 4, 1944

/s/ RALPH MUDGE

Witness:

MELVIN JAKOMIET

BOARD EXHIBIT No. 2(c)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, Sept. 30, 1944.

/s/ FREEMOND L. REED

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(d)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, Aug. 10, 1944.

/s/ R. O. GAROUTTE

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(e)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, 6-3, 1944.

/s/ GEO. W. PALMER

Witness:

/s/ GEO E. McKAY

BOARD EXHIBIT No. 2(f)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, 6-3, 1944.

/s/ R. H. WILSON

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(g)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my

sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, June 3, 1944.

/s/ E. S. CASINELLA

Witness:

GEO. E. McKAY

BOARD EXHIBIT No. 2(h)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, June 3, 1944.

/s/ RUDY ZAYAS

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(i)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining agent, in all matters pertaining to wages and working conditions.

Date, June 3, 1944.

/s/ MELVIN JAKOMIET

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(j)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date, June 3, 1944.

/s/ ORAN ELLIS

Witness:

/s/ GEO. E. McKAY

BOARD EXHIBIT No. 2(k)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date, June 3, 1944.

/c/ CHAS. HAVERLAND

Witness:

/s/ GEO. E. McKAY

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 3

Reno Shop employees on payroll
period ending May 15, 1944:

| Name | Classification |
|----------------------|----------------|
| O. A. Richer..... | Shop Sup't. |
| Jack Benton | Foreman |
| E. Cassinelli | Mechanic |
| O. O. Ellis | Mechanic |
| C. Haverland | Mechanic |
| G. W. Palmer | Mechanic |
| Ed Staats | Mechanic |
| H. Wilson | Mechanic |
| R. Zayas | Mechanic |
| T. D. Hudgens | Greaser |
| M. Jakomiet | Greaser |
| Geo. McKay | Greaser |
| R. Mudge | Greaser |
| S. A. Williams | Greaser |
| R. Reisbeck | Tireman |

No changes in the personnel of this shop on May
16, 1944.

Reno Shop employees on payroll
period ending September 30, 1944:

| Name | Classification |
|---------------------|----------------|
| O. A. Richer | Shop Sup't. |
| Jack Benton | Foreman |
| E. Cassinelli | Mechanic |
| O. O. Ellis | Mechanic |
| C. Haverland | Mechanic |

| Name | Classification |
|----------------------|----------------|
| R. O. Garoutte | Mechanic |
| C. M. McBride | Mechanic |
| F. L. Reed | Mechanic |
| Ed Staats | Mechanic |
| R. Wedel | Mechanic |
| H. Wilson | Mechanic |
| M. Jackomiet | Helper |
| D. Lambert | Greaser |
| R. Mudge | Greaser |
| R. J. Kelly | Greaser |
| R. Reisbeck | Tireman |

No changes in the personnel of this shop during period of October 1st to October 5th, 1944.

(Received Aug. 20, 1945, N.L.B.)

(In Ev)

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 4

WELLS, INC.

Employees and Classifications—12/15/44

Reno Division

| | |
|--------------------|----------------|
| J. W. Wells | President |
| H. A. Wells | Vice President |
| R. C. Wells | Reno Manager |
| J. W. Hess | Secty-Treas. |
| O. A. Richer | Maint. Supt. |
| H. B. Divine | Shop Supt. |
| J. C. Benton | Shop Foreman |

| | |
|------------------|---------------------|
| E. S. Casinella | Foreman |
| A. B. Gandrud | Foreman |
| G. W. Hollenbeck | Foreman |
| C. Haverland | Foreman |
| Ray Reisbeck | Foreman |
| C. F. Crews | Dispatcher |
| J. E. Hunt | Dispatcher |
| J. J. Jordan | Parts Man |
| W. E. Randolph | Ass't. Secty-Treas. |
| M. A. Lehman | Bookkeeper |
| J. D. Gammil | Payroll Clerk |
| R. L. Thomas | Billing Clerk |
| I. Wainwright | Stenographer |
| F. C. Wells | Safety & Ins. |
| Oran Ellis | Mechanic |
| C. H. McBride | Mechanic |
| Ralph Mudge | Mechanic |
| E. F. Staats | Mechanic |
| S. E. Tower | Mechanic |
| R. H. Wilson | Mechanic |
| Albert McFadden | Mech. Helper |
| D. A. Jensen | Greaser |
| H. C. McConnell | Greaser |
| W. J. Barrios | Driver |
| Harry Howell | Driver |
| R. E. Hamilton | Driver |
| F. B. Lewis | Driver |
| Harry Maas | Driver |
| D. J. Mattice | Driver |
| Frank Nevis | Driver |
| W. C. Patterson | Driver |
| F. J. Phillips | Driver |

| | |
|----------------------|--------|
| H. E. Retterer | Driver |
| Ed Sandberg | Driver |
| R. W. Selby | Driver |
| Jack Stokes | Driver |
| Ted Thomas | Driver |
| Joe Yturraspe | |

Luning Division

| | |
|------------------------|---------|
| O. J. Van Winkle | Supt. |
| C. Branscom | Foreman |
| W. F. Rose | Greaser |
| R. E. Doubles | Driver |
| Bruce M. Gould | Driver |
| J. A. Hofland | Driver |
| Geo. B. Jackson | Driver |
| Geo. O. Wheatley | Driver |
| Joe Williams | Driver |

Elko Division

| | |
|-----------------------|---------|
| H. C. Anderson | Supt. |
| H. C. Millard | Foreman |
| M. C. Wignall | Foreman |
| Edna Morris | Clerk |
| Fred Walker | Greaser |
| R. O. Lee | Greaser |
| Geo. Bennett | Driver |
| Ralph Drown | Driver |
| Joe Hethcock | Driver |
| George Lostra | Driver |
| O. F. Romine | Driver |
| H. H. Stevenson | Driver |

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 5

Reno, Nevada

August 8, 1944

Subj: Labor Agreement

Mr. Joe Wells
Wells Cargo
Las Vegas, Nev.

Dear Sir:

This communication serves as notice that Lodge #801, International Association of Machinists, Reno, Nevada represents the Mechanics employed by you in both of your Reno shops, and hereby request that you meet with our Representatives for the purpose of negotiating an agreement between your Company and Lodge #801, covering the employees performing work coming under the jurisdiction of the International Association of Machinists.

All of the above-mentioned employees are represented by Lodge #801 and we will submit proof of this representation at the first meeting with you.

I was informed by Mr. Howard Wells, of your Company that you would not be in Reno for some time to come, but that your duties would require your presence in Las Vegas, and suggested that I contact you in regards to this matter, as you are the only one who has authority to decide matters of this kind.

I talked to some of your mechanics and it is my opinion that it will be to the best interests of all concerned to have this agreement signed as soon as possible.

In view of your inability to come to Reno, I will meet you in Las Vegas, at your earliest convenience, if you can meet me Monday or Tuesday of next week at Las Vegas, advise by mail, to T. E. McShane, 1115 Sierra St., Reno, Nevada, c/o Geo. E. McKay, Secretary Lodge #801, I.A. of M.

Yours truly,

T. E. McSHANE, G. L. R.

International Asso. of Ma-
chinists.

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 6

AGREEMENT

This agreement entered into this 15th day of May, 1944 by and between Wells Cargo, Inc. on their Defense Plant Corporation-Basic Magnesium Incorporated ore haul, party of the first part, hereinafter referred to as the company, and the Local Lodge #845, I. A. of M., Las Vegas, Nev., party of the second part, hereinafter referred to as the Union, Witnesseth:

It is hereby agreed that all of the provisions of this agreement, as described and contained in the following articles and sections thereof, shall be binding upon the parties signatory hereto, and shall be observed and enforced by both the company and the Union.

ARTICLE I.

Section A

The company recognizes the Union as the sole collective bargaining agency for all employees performing work which comes under the jurisdiction of the I. A. of M.

Section B—Machinists Jurisdiction

The Company recognizes the jurisdiction of the Machinists as that contained in the Constitution of the International Association of Machinists, effective April 1, 1942 between pages V and X, inclusive.

Section C—Union Membership

All employees covered by this agreement shall be members of Local #845, I. A. of M., Las Vegas, Nevada, and shall maintain their membership in said Local #845 during the life of this agreement.

Section D—New Employees

New employees shall be secured through the Union, if the Union is unable to furnish competent men within 96 hours, then the company may secure them from other sources, provided they obtain a work clearance from the Union before going to work and comply with Union membership requirements within fifteen (15) days after going to work.

ARTICLE II.

Section A—Company Rules

Company rules, if and when they affect employees covered by this agreement, shall be subject to the provisions of the agreement.

Section B—Nondiscrimination

The company agrees not to discriminate in any way against any employee for Union Activities, providing that such activities are in accordance with the Provisions of the Agreement.

ARTICLE III.

Section A—Report Time

Any employee ordered to report for work and who is not put to work shall be paid four (4) hours at the hourly rate in effect for the day in which the incident occurs. Any employee who is not notified by quitting time not to report for work on his regular shift shall be considered as being ordered to report for work.

Section B—Premium Pay

On any shift that starts between 6:00 a. m. and 8:00 a.m., whether it be the first or second shift, no premium will be paid and on the fourth shift a 15% premium will be paid over the wages shown in this agreement.

In the event this operation should be regulated to a three shift operation, no premium will be paid on the first shift, a 10% premium will be paid on the second, and a 15% premium will be paid on the third shift.

Section C—Lunch Period

All lunch periods shall be thirty (30) minutes on employees time.

ARTICLE IV.

Section A—Hours of Labor

Standard work day and week:

Five (5) eight (8) hour shifts shall constitute a regular work week. All time worked in excess of eight (8) hours in any one day shall be paid for at one and one half ($1\frac{1}{2}$) times the hourly rate. Time and one half ($1\frac{1}{2}$) times the regular hourly rate shall be paid for the sixth (6th) consecutive day. Double the regular hourly rate shall be paid for the seventh (7th) consecutive day of the regular work week.

Section B

Until the President of the United States of America shall proclaim that the national emergency no longer exists, the overtime provisions set up by the President's directive and interpreted by the Department of Labor shall apply.

Section C—Holidays

The following days shall be paid for at one and one half ($1\frac{1}{2}$) times the regular rate—New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

When any of the holidays named in this article fall on Sunday, then the day observed by the State or Federal Government shall be considered a holiday and paid for as such.

When holidays fall on employees' regular scheduled work day and are not worked at the request of the employer, the employee shall be paid for that

day at the regular straight time rate; but if the holiday falls on an employee's regular day off, the employee will not be paid for that day.

Section D—Vacation

Employees covered by this agreement, and who have been in the service of the Company for a period of one year, shall be given one week vacation with pay, at the employee's regular weekly rate.

For employees who have been in the service of the Company for a period of three years, they shall be given two weeks vacation with pay, at the employee's regular weekly rate.

At the end of each year's service, thereafter, the employees shall be given a vacation as defined above.

The time that vacation is to be taken shall be decided by the Company and the employee. Forty (40) weeks worked, in a twelve-month period, shall constitute a year's service within the meaning of the Article.

ARTICLE V.

Section A—Seniority

Seniority shall apply in all cases, when the senior employee is competent. The Company and the Union shall judge the competency of the employee. Any employee in company service for sixty (60) days shall be considered as having established his competency and given a seniority rating retroactive to his employment date.

Section B—Discharges

No employee shall be discharged or layed off for

any other than a justifiable cause. Any employee shall have the right to appeal his discharge or lay-off through the Grievance Procedure established by the Provision of the Agreement. All grievances must be presented by the employee in writing to Union and employer within five (5) days of discharge or lay-off. If reinstated, he shall be paid for all time lost by the reason of said discharge or lay-off.

In all cases of termination of service, whether it be discharge, lay-off, or resignation, the employee shall be given a copy of his termination of service slip, which shall state the reason for termination.

Section C—Dispute and Grievance

Any dispute or grievance affecting employees covered by this Agreement that cannot be settled by the Company and the representative of the Union within three (3) days shall be submitted to the conciliation service of the U. S. Department of Labor.

Section D—Armed Forces

As to the reemployment of employees of the Company inducted into the land or naval forces of the United States, as a result of the operation of the "Selective Training and Service Act of 1940" or the "National Guard and Reserve Officers' Mobilization Act", Public Act No. 783 and Public Resolution No. 96, Seventy-Sixth Congress, the Company will comply with Federal and State Laws relating there to. As to reemployment of any other employees who enter active service in the land or naval

forces of the United States by enlistment and as to whom no such Federal or State Laws have been enacted, the Company and the Union will use their best efforts to secure for such enlisted employees' advantages equal to those provided by law for employees inducted into such forces.

ARTICLE VI.

Section A

This agreement shall be binding on the Company, its successors or assignees, and the parties hereto.

ARTICLE VII.

Section A—Duration of Agreement

This agreement shall be in full force and effect for a period of one year from date of signing, and shall remain in effect from year to year thereafter, unless either party signatory to this Agreement serves notice upon the other party, in writing, thirty (30) days prior to the anniversary date, and such notice shall state the desired changes, whether it be to change or modify any section or sections thereof, or to terminate the Agreement. Negotiations shall start within ten (10) days of receipt of said notice. The Agreement shall remain in full force and effect during negotiations, and if the agreement is not renewed by the termination date, then the life of the agreement shall be extended for a period of thirty (30) days, and shall be in full force and effect during the said thirty days extension, and if agreement is not reached in this thirty (30) day extension period this agreement will terminate.

ARTICLE VIII.

(Minimum) Wage Schedule

Foreman shall be paid \$.125 (12½c) per hour more than the highest wage rate under their supervision.

Machinist Diesel Specialist \$1.75 per hour

Mechanic's Assistant 1.25 per hour

Mechanic 1.50 per hour

Agreed to and signed this 16th day of May, 1944.

For the Company:

/s/ J. W. WELLS

For the Union:

/s/ GLEN O. ANDERSON,

Business Agent, Local #845.

/s/ T. E. McSHANE,

Grand Lodge Representative.

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 7

Western Union Telegraph Form

Oct. 30, 1944

Joe Wells

c/o Las Vegas Vulcanizing Shop

911 South Main St.

Las Vegas.

Important That You Meet Me Here at Once.
Wire When You Can Be Here.

T. E. McSHANE

Overland Hotel.

[Endorsed]: Admitted Aug. 24, 1945.

BOARD EXHIBIT No. 8

Western Union Telegraph Form

1944 Nov 1 PM 6 26

KHA361 NL PD-WUX Henderson Nev 1

T E McShane,
Overland Hotel Reno Nev.

You Promised at Least Ten Days Notice Before Meeting Impossible to Get Away for at Least Two Weeks Will Be in Inyokern Salt Lake City and Denver in the Meantime Will Contact You When Available.

J. W. WELLS.

[Endorsed]: Admitted Aug. 24, 1945.

RESPONDENT EXHIBIT No. 1

Auto Mechanic Local 801
International Association of Machinists
A. F. of L.
Reno, Nevada.

Dec. 18, 1944.

To Whom It May Concern:

We the undersigned, employees of Wells Inc. Reno, Nevada, do here-by authorize the International Association of Machinists A. F. of L. Local 801, known as the Machinists Union, to act as our

sole bargaining agent in all matters pertaining to wages and working conditions.

Signed by

/s/ CHAS. HAVERLAND

/s/ ORAN ELLIS

/s/ E. J. STAATS

/s/ RALPH MUDGE

/s/ D. A. JENSON

/s/ S. E. TOWER

/s/ M. McCLOUD

/s/ E. S. CASINELLA

/s/ R. H. WILSON

/s/ A. B. GANDRUD

/s/ Illegible

/s/ JAMES D. HARRISON

/s/ Illegible

/s/ C. H. McBRIDE

/s/ RAY REISBECK

/s/ JACK BENTON

(Received—Date Illegible—N. L. B.)

[Endorsed]: Admitted Aug. 24, 1945.

RESPONDENT'S EXHIBIT No. 2(a)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my

sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date June 3, 1944.

/s/ RAY O. FALK

Witness:

/s/ GEO. E. McKAY

[Endorsed]: Admitted Aug. 25, 1945.

RESPONDENT'S EXHIBIT No. 2(b)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date June 3, 1944.

/s/ JACK BENTON

Witness:

/s/ GEO. E. McKAY

[Endorsed]: Admitted Aug. 25, 1945.

RESPONDENT'S EXHIBIT No. 2(c)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my

sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date 6-3, 1944.

/s/ S. A. WILLIAMS

Witness:

/s/ GEO. E. McKAY

[Endorsed]: Admitted Aug. 25, 1945.

RESPONDENT'S EXHIBIT No. 2(d)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date 12-25, 1944.

/s/ O. A. JANSEN

Witness:

/s/ RALPH MUDGE

[Endorsed]: Admitted Aug. 25, 1945.

RESPONDENT'S EXHIBIT No. 2(e)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my

sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date 10-4, 1944.

/s/ DEWEY A. LAMBERT

Witness:

/s/ MELVIN JAKOMIET

[Endorsed]: Admitted Aug. 25, 1945.

—————

RESPONDENT'S EXHIBIT No. 2(f)

Authorization

I do hereby designate Local #801 International Association of Machinists, Reno, Nevada, as my sole bargaining Agent, in all matters pertaining to wages and working conditions.

Date 6/3, 1944.

/s/ O. A. RICHER

Witness:

/s/ GEO. E. McKAY

[Endorsed]: Admitted Aug. 25, 1945.

In the United States Circuit Court of Appeals
in and for the Ninth Circuit

No. 11388

WELLS, INC., a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

PETITION FOR REVIEW

PETITION FOR REVIEW OF DECISION OF
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now Wells, Inc., a corporation organized and existing under the laws of the State of Nevada, and files its petition, pursuant to the provisions of Section 10 of the Act of Congress, of July 5, 1935 (Ch. 372, 49 Stat. 453), known and cited as the National Labor Relations Act, for the review of the decision and order of the National Labor Relations Board entered at Washington, D. C., on June 12, 1946, ordering that petitioner cease and desist from certain practices denominated by said board as "unfair labor practices," reinstate one employee (foreman) with back wages, and respectfully shows to this court:

I.

JURISDICTION

That petitioner is a corporation organized and existing under the laws of the State of Nevada; that its principal office and place of business is in the city of Reno, State of Nevada.

That respondent, National Labor Relations Board, is an agency of the government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (Chapter 372, 49 Stat. 453) commonly known, referred to, and cited as the National Labor Relations Act; that said board has an office and a Regional Director at San Francisco, State of California, within the Ninth Circuit and within the jurisdiction of this court; that as well hereinafter more fully appear, the so-called unfair labor practices in which it is alleged in this proceeding that petitioner has been engaged, all occurred in Reno, State of Nevada, within the Ninth Circuit and within the jurisdiction of this court.

II.

STATEMENT OF PROCEEDINGS

(a) Filing of charges: That on the 9th day of August, 1945, the International Association of Machinists filed with the Regional Director of the National Labor Relations Board at San Francisco, California, charges to the effect that petitioner had engaged and was engaging in unfair labor practices within the meaning of said National Labor Rela-

tions Act at Reno, State of Nevada, contrary to said act.

(b) Complaint and its contents: That thereafter on the 9th day of August, 1945, the board issued its complaint against the petitioner in substance alleging:

That petitioner was a corporation with its principal office and place of business at Reno, State of Nevada. That it is a common carrier of freight by motor truck in the states of Nevada and California; that the Wells, Inc., a corporation, in the course and conduct of its business, transports and continuously has transported substantial amounts of freight from points in Nevada to points in California and from points in California to points in Nevada. That on the 31st day of January, 1945, the company terminated the employment of one Jack Benton solely because of his membership in and activities on behalf of the Union. Further, that the company has refused reinstatement of the said Jack Benton.

Said complaint further alleged that the company has interfered with, restrained and coerced its employees and did interfere with, restrain and coerce its employees in the exercise of their rights as guaranteed in Section 7 of the Act, and thereby is engaging in unfair labor practices within the meaning of Section 8, subdivision 1, of the Act. It is further alleged that the company refused to bargain, and has engaged in and is now engaging in unfair labor practices as defined in Section 8, sub-

division 5, of the Act. That by its discriminatory discharge of Jack Benton, that it was engaged in unfair labor charges within the meaning of Section 8, subdivision 3, of the Act.

(c) Answer and its contents: That thereafter on the 16th day of August, 1945, the petitioner filed its answer admitting that it was a corporation engaged in interstate commerce, but denying generally and specifically the allegations of the complaint charging the commission of unfair labor practices.

(d) Proceedings before the trial examiner: That thereafter a hearing was conducted before Howard Meyers, Esq., a trial examiner appointed by the board to hear said cause. That on or about the 17th day of October, 1945, the said Howard Meyers made and entered his Intermediate Report which he filed with the National Labor Relations Board.

(e) Order transferring case to Natitonal Labor Relations Board: That subsequent to the filing of said report the National Labor Relations Board made and entered its order transferring to and continuing said case before the Board.

(f) Filing objections and brief: That thereafter and on or about the 17th day of November, 1945, this petitioner filed its objections to the intermediate report, recommendations and findings of fact and conclusions of trial examiner. That petitioner also filed its written brief in support of its objections to the intermediate report, recommenda-

tions, findings of fact and conclusions of trial examiner.

(g) Order and decision of the board: That thereafter on the 12th day of June, 1946, the board entered its order and decision in the above entitled cause, containing findings of fact which were against the contentions of this petitioner on practically all of the material and controversial issues, which findings are not supported by nor based upon evidence in said cause; however, said decision and order was not unanimous, but one of the members thereof, the Honorable Gerard D. Reilly, entered his dissent, in which he stated he could not accept the conclusion of the majority that this petitioner discharged the said foreman, Benton, because of his desire to discourage union membership in the rank and file union employees. And further, that he could not accept the decision of the majority that this discharge was violating Section 8 (3) of this Act. That the majority of the Board made its conclusions of law which are contrary to the Act, and particularly in respect to the discharge of the foreman, Benton. That such conclusions are without legal basis in the record of said cause. The long established principle of imputing to the employer of responsibility for the acts and statements of supervisory employees cannot longer prevail if, as the majority opinion provides, foremen are free to engage in union activities in behalf of a rank and file union. The majority of the board by directing the reinstatement of Benton adopts the principle that an employer cannot discharge a foreman be-

cause of his activities in organizing a union among the rank and file of the employees. This principle is not in accordance with the National Labor Relations Act. It is essential for the preservation of employees' freedom in joining labor organizations or selecting the bargaining representatives of their choice that they not be interfered with in this right by a supervisor or foreman of the management.

That said decision in effect found petitioner guilty of the unfair labor practices charged in the complaint; it in effect required petitioner to cease and desist from said so-called unfair labor practices, and requiring petitioner to reinstate the said Benton with back pay; it further required this petitioner to post notices in conspicuous places, stating that in effect it would cease and desist from unfair labor practices; further, to notify the office of the Regional Director of the National Labor Relations Board at San Francisco, California, as to what steps petitioner has taken to comply with said order.

This petitioner has notified the office of the Regional Director of the National Labor Relations Board of San Francisco, California by telephone as well as letter that it is filing with this court a petition for review.

That a true copy of said petition and order is attached hereto and marked Exhibit "A", and made a part of this petition.

(h) Petitioner's reasons for noncompliance:

That the office of the Regional Director of the National Labor Relations Act has been advised of the petitioner's reasons for noncompliance with the order as hereinafter set forth:

1. The board's findings of fact as to unfair labor practices are not supported by adequate or substantial evidence and the evidence affords no reasonable basis therefor.

2. That the discharge of Benton was not in violation of Section 8 (3) of the National Labor Relations Act or any provision of said act.

3. That there is no evidence to support the findings that Benton's discharge was to discourage membership in the rank and file union. That the foreman, Benton, had the right and power to hire and discharge, which power he exercised, and, therefore, any activity on the part of Benton on behalf of the rank and file union is proscribed by the act. Therefore, the petitioner had a right to discharge said Benton. The petitioner was under an affirmative duty to terminate coercive activity of its representative interfering with its employees' freedom of self organization.

III.

ASSIGNMENTS OF ERROR

Petitioner, as a basis for review, makes the following assignments of error, to-wit:

(1) That the petitioner, by the discharge of the

foreman, Benton, discouraged membership in the rank and file of the union in violation of Section 8 (3) of the act.

(2) The finding that the petitioner discriminated as to the hire and tenure of foreman, Benton's, employment thereby discouraging membership in the rank and file of the union employees.

(3) The finding that the petitioner interfered with, restrained and coerced its employees in violation of the rights guaranteed in Section 7 of the act, and further, that the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8-1 of the act.

IV.

PRAYER.

Wherefore, petitioner petitions this court for a review of the decisions, findings and order of the National Labor Relations Board dated June 12, 1946, and prays:

(1) That a copy of this petition and of the process of this court be served upon the respondent, National Labor Relations Board, as provided by Section 11-5 of the National Labor Relations Act.

(2) That the National Labor Relations Board be directed and required by an appropriate order of this court, forthwith, to certify and file with this court, pursuant to Section 10 (f) of the National Labor Relations Act, a transcript of the

entire record in the proceedings, including therein the trial examiner's report and findings upon the facts, including all exhibits and the originals of all papers filed with the board from which the complaint was formulated and issued.

(3) That this petition for review be preferred and heard and determined expeditiously, as provided in Section 11 (i) of the National Labor Relations Act.

(4) That the said decision, findings and order, and the mandatory and injunctive requirements and provisions thereof as to the petitioner be each and in all respects annulled, vacated, and set aside.

(5) That the National Labor Relations Board be ordered and directed to dismiss the complaint and proceedings.

(6) That the petitioner shall have such other and further relief as may be just and proper in the premises.

Dated this 18th day of July, 1946.

WELLS, INC.

By LOUIS H. CALLISTER,
Attorney.

State of Nevada

County of Washoe—ss:

Howard A. Wells, being first duly sworn on oath, deposes and says: That he is the Vice President of Wells, Inc., the petitioner herein named, and as such makes this verification; that he has read the foregoing petition, knows the contents thereof, and

the same is true of his own knowledge except as to matters therein alleged on information and belief, and as to such matters he believes them to be true.

/s/ HOWARD A. WELLS.

Subscribed and sworn to before me this 17th day of July, 1946.

(Seal) /s/ MARGARET A. LEHMAN,
Notary Public residing at Reno, Nevada. My
Commission Expires: July 31, 1948.

[Endorsed]: Filed July 18, 1946.

[Title of Circuit Court of Appeals and Cause.]

POINTS RELIED UPON IN SUPPORT OF
PETITION FOR REVIEW

1. That the National Labor Relations Board erred in finding that the petitioner, by the discharge of the foreman, Benton, discouraged membership in the rank and file of the union in violation of Section 8 (3) of the National Labor Relations Act.

2. That the National Labor Relations Board erred in finding that the petitioner discriminated as to the hire and tenure of Foreman Benton's employment, which thereby discouraged membership in the rank and file of the union employees.

3. That it erred in directing this petitioner to offer Jack Benton immediate and full reinstatement to his former or a substantially equivalent

position without prejudice to his seniority or other rights and privileges.

4. That the National Labor Relations Board erred in directing the petitioner to make whole Jack Benton for any loss of earnings he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period.

5. That the National Labor Relations Board erred in finding that the petitioner interfered with, restrained and coerced its employees and did certain acts in violation of the rights guaranteed in Section 7 of the National Labor Relations Act.

6. That the National Labor Relations Board erred in finding that the respondent had engaged and is engaging in unfair labor practices within the meaning of Section 8, paragraph one, of the National Labor Relations Act.

7. That the National Labor Relations Act hereinabove referred to is the act of July 5, 1935, C. 372; 49 Stat. 449; 29 USCA, paragraph 151-166.

Dated this 27th day of September, 1946.

WELLS, INC.,
By LOUIS H. CALLISTER,
Attorney.

[Endorsed]: Filed Sept. 30, 1946.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, and, pursuant to the National Labor Relations Act (49 Stat. 449, U.S.C. Supp. V, Title 29, Sec. 151, et seq.), herein called the Act, files its answer to the petition to review and set aside a Decision and Order issued by the Board against Wells, Inc., Reno, Nevada, petitioner herein, and its request for enforcement of said Decision and Order.

1. The Board admits the allegations contained in paragraph I of the petition for review.

2. Answering the allegations contained in subparagraphs (a) to (f), inclusive, of paragraph II of the petition for review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

3. Answering the allegations contained in subparagraph (g) of paragraph II of the petition for review, the Board prays reference to the certified transcript of the record, filed herein, of the proceed-

ings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter. And further answering the allegations contained in subparagraph (g) of paragraph II of the petition for review, the Board denies each and every allegation of error contained therein.

4. The Board denies each and every allegation of error contained in subparagraph (h) of paragraph II and in paragraph III of the petition for review, and each and every subparagraph thereof.

5. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

Wherefore, having answered each and every allegation contained in the petition for review, the Board requests this Court to deny petitioner's prayer that the Decision and Order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) of the National Labor Relations Act, respectfully requests this honorable Court for enforcement of its order issued against petitioner on June 12, 1946, in the proceeding designated on the records of the Board as Case No. 20-C-1306, entitled: "In the Matter of Wells, Inc., and International Association of Machinists."

6. In support of this request for enforcement of its order, the Board respectfully shows:

(a) Wells, Inc., a Nevada corporation, engaged in business within this judicial circuit. This Court has jurisdiction of the petition for review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act;

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions filed thereto, and briefs filed in support thereof, the Board, on June 12, 1946, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Wells, Inc., Reno, Nevada, and its officers, agents, or successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, or any other labor organ-

ization, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment;

(b) Threatening employees with economic reprisal because of their activities on behalf of the above-named or any other labor organization;

(c) Interrogating employees concerning their membership or other activities in or on behalf of the above-named or any other labor organization;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Jack Benton immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Jack Benton for any loss of earnings he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount

he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post at its plant at Reno, Nevada, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On June 12, 1946, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in said pro-

ceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon the order set forth hereinabove, a decree denying the petition to review and set aside and enforcing in whole said order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A", shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that."

/s/ A. NORMAN SOMERS,

Assistant General Counsel,
National Labor Relations
Board.

Dated at Washington, D.C., this 6th day of September, 1946.

“APPENDIX A”

Notice to All Employees Pursuant to
a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not discourage membership in International Association of Machinists, or any other labor organization, by discharging or refusing to reinstate any of our employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

We will not threaten our employees with economic reprisal because of their activities on behalf of the above-named or any other labor organization.

We will not interrogate our employees concerning their membership or other activities in or on behalf of the above-named or any other labor organization.

We will offer to Jack Benton immediately and full reinstatement to his former or a substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed and make him whole for any loss of pay suffered as a result of the discrimination.

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the above-named or any other labor organization, to

bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain members of the International Association of Machinists, or any other labor organization.

WELLS, INC.,

.....

(Employer).

By

(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents there-

of; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 6th day of September, 1946.

[Seal] /s/ KATHRYN B. HARRELL,
Notary Public, District of
Columbia.

My commission expires March 7, 1947.

[Endorsed]: Filed Sept. 10, 1946.

[Title of Circuit Court of Appeals and Cause.]

ANSWER AND REPLY TO PETITION FOR
REVIEW OF RESPONDENT'S ORDER
AND REQUEST FOR ENFORCEMENT OF
SAID ORDER

Comes now the petitioner in the above entitled action, Wells, Inc., and in answer to the National Labor Relations Board, respondent's, answer and petition for review of its order and request for enforcement of said order, admits, denies and alleges as follows:

1. That heretofore it has filed its petition in the above entitled cause, for a review of the decision of the National Labor Relations Board in respect to the order as set forth in said answer and petition of the respondent. That said petition is referred

to and expressly made a part of this answer and reply.

2. That said order of said National Labor Relations Board, the respondent herein, is not supported by adequate or substantial evidence, and that the evidence in said cause affords no reasonable basis therefor.

3. That there is no adequate or substantial evidence or any evidence whatsoever that affords a reasonable basis for the finding and order that the petitioner interfered with and restrained its employees in violation of the rights guaranteed in Section 7 of the National Labor Relations Act; and further, that the petitioner had engaged in and is engaging in unfair labor practices in the meaning of Section 8, and particularly paragraph one, of the National Labor Relations Act.

4. That the discharge of the said foreman, Benton, was not in violation of Section 8 (3) of the National Labor Relations Act. That the board is not entitled to enforcement of its orders for the reasons hereinabove stated.

5. This petitioner denies generally and specifically each and every allegation contained in paragraph five of respondent's answer.

6. Petitioner alleges that said order is invalid and without force or effect by reason of the fact that it is based upon findings which are not supported by evidence; that said order and finding in respect to the reinstatement of said Benton is in

violation of and contrary to the provisions of the National Labor Relations Act.

Wherefore, petitioner prays:

1. That the request for enforcement of said order by the National Labor Relations Board be denied.

2. That the said decision, findings and order, and the mandatory and injunctive requirements and provisions thereof as to the petitioner be each and in all respects annulled, vacated, and set aside.

3. That the National Labor Relations Board be ordered and directed to dismiss the complaint and proceedings.

4. That the petitioner shall have such other and further relief as may be just and proper in the premises.

Dated this 27th day of September, 1946.

WELLS, INC.,

By LOUIS H. CALLISTER,
Attorney.

State of Nevada,

County of—ss.

Howard A. Wells, being first duly sworn, states that he is vice president of Wells, Inc., petitioner herein, and that he is authorized to and does make this verification in behalf of said Wells, Inc.; that he has read the foregoing Answer and Reply and has knowledge of the contents thereof; and that the

statements made therein are true to the best of his knowledge, information and belief.

/s/ HOWARD A. WELLS, V. P.,

Subscribed and sworn to before me this 28th day of September, 1946.

[Seal] /s/ MARGARET A. LEHMAN,
Notary Public.

Residing in Reno, Nevada.

My commission expires July 31, 1948.

[Endorsed]: Filed Sept. 30, 1946.

[Title of Circuit Court of Appeals and Cause.]

BOARD'S COUNTER-DESIGNATION OF
RECORD.

Comes now the National Labor Relations Board, the petitioner herein, and, in conformity with the revised rules of this Court, heretofore adopted, designates the following additional portions of the record to be printed:

1. The following Board's Exhibits: 2A to K, inclusive (authorizations designating Local No. 801, International Association of Machinists as sole bargaining representative); 5 (Letter, dated August 8, 1944, addressed to Mr. Joe Wells); 7 (Telegram, dated October 30, 1944, addressed to Joe Wells).

2. The following Respondent's Exhibits: 1 (Petition, dated December 18, 1944, signed by certain employees, designating Local No. 801, International

Association of Machinists as their sole bargaining representative).

/s/ A. NORMAN SOMERS,
Assistant General Counsel National Labor Relations Board.

Dated at Washington, D. C., this day of October 1946.

[Endorsed]: Filed Oct. 8, 1946.

[Title of Circuit Court of Appeals and Cause.]

PETITIONER'S AMENDED DESIGNATION

Petitioner, Wells, Incorporated, hereby designates the portions of the transcript in the case before the National Labor Relations Board entitled: Wells, Incorporated and International Association of Machinists, Case No. 20-C-1306:

1. Proceedings beginning at Page 3 of the first transcript, which includes Pages 1 to 171 inclusive. This includes the testimony of the following named witnesses:

| | |
|------------------|-------------------------|
| K. C. Apperson | Jack Benton (Recalled) |
| Jack Benton | C. H. McBride |
| George E. McKay | Jack Benton (Resumed) |
| Glen O. Anderson | H. B. Divine |
| T. E. McShane | H. B. Divine (Recalled) |

2. Also to designate the second transcript which

includes Pages 173 to 246 inclusive, which includes the testimony of the following witnesses:

J. W. Wells

J. W. Wells

Jack Benton

together with the following:

Oral Argument on Behalf of the National Labor Relations Board

Oral Argument on Behalf of the Respondent

3. It is our purpose to designate the testimony and oral argument on behalf of the Board as well as on behalf of the Respondent in the two transcripts without any exception whatsoever.

Board's Exhibits:

B-1 (a) through 1 (e) B-6

B-3 B-8

B-4

Respondent's Exhibits:

R-1 R-2 (d)

R-2 (a) R-2 (e)

R-2 (b) R-2 (f)

R-2 (c)

4. Petitioner further designates the following to be included in the record:

a. Intermediate report dated the 7th day of October, 1945.

b. Exceptions of Respondent's (petitioner here) to intermediate report.

c. Decision and order of National Labor Relations Board dated June 12, 1946.

d. The petition for review, if the same is necessary for being included in transcript.

e. Answer of National Labor Relations Board dated September 6, 1946.

f. Petitioner's reply to answer and request for enforcement of the National Labor Relations Board.

[Endorsed]: Filed Oct. 2, 1946.

[Endorsed]: No. 11388. United States Circuit Court of Appeals for the Ninth Circuit. Wells, Inc., a Corporation, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Wells, Inc., a Corporation, Respondent. Transcript of Record upon Petition for Review, and Petition to Enforce an Order of the National Labor Relations Board.

Filed September 10, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.